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UNITED STATES DEPARTMENT OF AGRICULTURE
BUREAU OF AGRICULTURAL ECONOMICS
WASHINGTON, D. C.

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RULES AND REGULATIONS

OF

Bureau of Agricultural Economics

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An advance print of Chapter I, Title 7, of the
Code of Federal Regulations

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Subtitle B—Regulations of the Department of Agriculture

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SUBPART—REGULATIONS

DEFINITIONS

Section 26.1 Meaning of words. Words in this subpart in the singular form shall be deemed to import the plural form when necessary.*† [Reg. 1, sec. 1.]

*§§ 26.1 to 26.86, inclusive, issued under the authority contained in sec. 8, 39 Stat. 485; 7 U.S.C. 84.

†The source of §§ 26.1 to 26.86, inclusive, (except for the amendments noted in the text,) is Regulations of the Secretary of Agriculture under the United States Grain Standards Act, Apr. 2, 1935, effective July 1, 1935. (SRA, BAE 148)

ABBREVIATIONS: The following abbreviations are used in this chapter:

BAE	Bureau of Agricultural Economics.
BAI	Bureau of Animal Industry.
C. A. C.	Cost and charges.

C. A. F.	Cost and freight.
C. I. F.	Cost, insurance and freight.
Gen. Regs.	General regulations under the United States Warehouse Act, Secretary of Agriculture.
Mim.	Mimeograph.
R. & Regs.	Public notice establishing the rules and regulations governing the inspection, sampling, and certification of cottonseed sold or offered for sale for crushing purposes, Secretary of Agriculture. July 30, 1937, as amended Aug. 13, 1937.
Reg., Regs.	Regulation, Regulations.
Sec. Agric.	Secretary of Agriculture.
SRA	Service and regulatory announcements, Secretary of Agriculture.
U.S.D.A.	United States Department of Agriculture miscellaneous publication No. 75, Bureau of Agricultural Economics. May 1930.
Miscel.	
Pub.	
U.S.W.A.	United States Warehouse Act.

26.2 Terms defined. For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **The Act.** The United States Grain Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C. 71–87).

(b) **Person.** Individual, association, partnership, or corporation.

(c) **In interstate or foreign commerce.** From any State, Territory, or District to or through any other State, Territory, or District, or to or through any foreign country, or within any Territory or District.

(d) **Grain.** Any grain for which standards shall have been fixed and established under the Act.

(e) **Grade.** Grade according to the official grain standards of the United States.

(f) **Inspection.** The procedure followed by a licensed inspector or a Federal grain supervisor in determining the grade of grain.

(g) **Secretary.** Secretary of Agriculture of the United States.

(h) **Department.** United States Department of Agriculture.

(i) **Bureau of Agricultural Economics.** Bureau of Agricultural Economics of the Department.

(j) **Regulations.** Rules and regulations made under the Act by the Secretary.

(k) **Licensed inspector.** Any person licensed by the Secretary to inspect and grade grain and to certificate the grade thereof for shipment or delivery for shipment in interstate or foreign commerce under the Act and regulations.

(l) **License.** A license issued under the Act by the Secretary to any person to inspect and grade grain and to certificate the grade thereof.

(m) **State grain inspector.** A person duly authorized and employed to inspect and grade grain under the laws of a State having a State grain inspection department established by the laws of such State.

(n) **District.** A defined portion of the United States designated by the Chief of the Bureau of Agricultural Economics for the purposes of the administration of the Act.

(o) **Grain supervisor.** An officer or employee of the Department whose duties include the supervision of the inspection and grading

of grain and of the certification of grade thereof, and the issuance of Federal appeal and Federal dispute grade certificates in accordance with the Act and regulations.

(p) Office of Federal Grain Supervision. The place designated by the Chief of the Bureau of Agricultural Economics from time to time, as the headquarters of a district.

(q) Appeal. An appeal taken pursuant to section 6 of the Act (39 Stat. 484; 7 U.S.C. 78) from the inspection and grading by a licensed inspector of any grain which has been sold, offered for sale, or consigned for sale, or which has been shipped or delivered for shipment in interstate or foreign commerce.

(r) Dispute. The submission, pursuant to section 4 of the Act (39 Stat. 483; 7 U.S.C. 76), of a dispute as to the grade of any grain which has been sold, offered for sale, or consigned for sale by grade, and shipped without inspection in interstate or foreign commerce, from a place at which there is no inspector licensed under the Act to a place at which there is no such inspector.

(s) Established inspection point. A place at which a licensed inspector is located, has his license posted and approved, and performs inspection services regularly within a recognized area.

(t) Designated point for inspection. A place designated by a licensed inspector, other than the place at which his license is posted, at which he regularly performs sampling and inspection service at the request of interested parties.

(u) Party. A person financially interested in a transaction involved in an appeal or a dispute.

(v) Appellant. A party taking an appeal under the Act, from an inspection and grading performed by a licensed inspector.

(w) Complainant. A party submitting a dispute as to the grade of grain, pursuant to section 4 of the Act (39 Stat. 483; 7 U.S.C. 76).

(x) Respondent. A party to an appeal or a dispute other than the appellant or the complainant.*† [Reg. 1, sec. 2]

LICENSED INSPECTORS

26.3 Form of application. Applications for licenses shall be made to the Secretary upon forms furnished for the purpose by the Chief of the Bureau of Agricultural Economics or by any Office of Federal Grain Supervision. Each such application shall fully and truly state the information therein required and shall be signed by the applicant.*† [Reg. 2, sec. 1]

26.4 Application of State grain inspectors. In case the applicant is a State grain inspector, the application shall contain or be accompanied by satisfactory evidence thereof, and shall otherwise comply with § 26.3.*† [Reg. 2, sec. 2]

26.5 Additional contents of application. In case the applicant is not a State grain inspector, his application shall contain or be accompanied by (a) satisfactory evidence that he (1) has passed his twenty-first birthday and (2) has had at least 1 year's experience as an inspector of grain of the kind for which a license is sought, or the equivalent of such experience; (b) a schedule of the fees which

*†For statutory and source citations, see note to § 26.1.

it is expected will be charged for his services as a licensed inspector; (c) satisfactory assurance that he will be provided with the necessary means or facilities for inspecting and grading grain of the kind for which a license is sought; and (d) shall otherwise comply with § 26.3.*† [Reg. 2, sec. 3]

26.6 Applicant to be examined for competency. Each applicant for a license, other than a State grain inspector, whose application complies with the requirements of §§ 26.3, 26.4 shall, if so required by the Chief of the Bureau of Agricultural Economics, be examined, for the purpose of determining his competency, at such time and place and in such manner as may be prescribed by the Chief of the Bureau of Agricultural Economics or by any officer of the Department designated by him for the purpose.*† [Reg. 2, sec. 4]

26.7 Issuance of temporary licenses. In the discretion of the Secretary in a case of special urgency and upon presentation to him of satisfactory evidence of the competency of the applicant, without compliance with §§ 26.3–26.6, a temporary license may be issued, valid only for the period therein specified, not exceeding 60 days. A temporary licensee shall be subject to all the provisions of the Act and the regulations thereunder.*† [Reg. 2, sec. 5]

26.8 License; property of Department. Each license shall be the property of the Department, but the licensee to whom issued shall, except as provided in § 26.9, have the right to the possession thereof.*† [Reg. 2, sec. 6]

26.9 Return of license. Whenever any license shall have been superseded, suspended, canceled, or revoked, the same shall be returned to the Secretary through the Office of Federal Grain Supervision in such inspector's district.*† [Reg. 2, sec. 7]

26.10 Conditions governing license. Each license issued shall be on condition that the licensee will, during the term of his license, apply the standards correctly and will comply with all the provisions of the Act and the regulations thereunder.*† [Reg. 2, sec. 8]

26.11 Inspector to post license. Immediately upon receipt of his license, each licensed inspector shall submit in writing to the Chief of the Bureau of Agricultural Economics a statement showing (a) the place at which he proposes to post his license and perform inspection service regularly, (b) the inspection arrangements at such point, and (c) the inspection equipment and apparatus which will be available to him. If the Chief of the Bureau of Agricultural Economics, or any officer of the Department designated by him for the purpose, is satisfied that the inspection arrangements and facilities at the disposal of such licensed inspector are adequate and in accordance with the requirements of the Act and this subpart, he shall approve such place of posting as an established inspection point. Such license thereafter shall be kept conspicuously posted at such approved place and shall not be removed to any other place unless notice in advance be given by the licensee to the Office of Federal Grain Supervision for the district in which the posting was last approved. Immediately after such notice such inspector shall

secure approval of the new place of posting as provided in this section.*† [Reg. 2, sec. 9]

26.12 Inspector to give notice of changes. Each licensed inspector shall immediately, in writing or by telegraph, inform the Office of Federal Grain Supervision in his district of any change in the point or points where he performs service as a licensed inspector, or in the nature of his duties or of his employment, or of any suspension of his activities for such length of time as to impair the inspection facilities at any point, and except in case of a State grain inspector, of any change in the schedule of fees for services performed by him as a licensed inspector.*† [Reg. 2, sec. 10]

26.13 Reporting violations, adulteration, irregularly loaded cars, etc. Each licensed inspector shall immediately report to the grain supervisor of his district evidence coming to his knowledge tending to show:

- (a) That any provision of the Act or regulations has been violated;
- (b) That any grain, inspected and graded, or to be inspected and graded, under the Act or regulations has been irregularly loaded, or so loaded as to conceal evidently inferior grain, or has been improperly inspected and graded by any licensed inspector; or
- (c) That any grain has been or is to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906 (34 Stat. 768; 21 U.S.C. Chapter 1), by the addition of water, dirt, screenings, or other material, whether the grade be changed or not.*† [Reg. 2, sec. 11]

26.14 Instructions by Federal grain supervisors. Each licensed inspector shall execute diligently all instructions for carrying out the Act and the regulations issued to him, directly or indirectly, by the grain supervisor in charge of the district wherein his license is posted, or by any officer of the Department engaged in administering the Act and regulations, and, upon request, shall advise such grain supervisor in full detail of any facts regarding inspection and grading equipment used by him, inspection services performed by him, and compensation received therefor.*† [Reg. 2, sec. 12]

26.15 Instructions by chief inspectors. No chief, or supervising inspector, licensed under the Act, shall issue to licensed inspectors under his supervision any instructions inconsistent with the Act or regulations. Each licensed inspector shall immediately report to the Office of Federal Grain Supervision in his district any instructions issued contrary to this section.*† [Reg. 2, sec. 13]

26.16 Discriminatory and unreasonable fees forbidden. Whenever, after citation, the Chief of the Bureau of Agricultural Economics shall determine that discrimination has been practiced or unreasonable fees demanded by any licensed inspector, he may order their discontinuance. Failure on the part of any licensee to conform to such order shall be regarded as a violation of this section.*† [Reg. 2, sec. 14]

26.17 Inspection and grading. Inspection and grading of a lot or parcel of grain tendered for inspection and grading under the Act shall consist of taking and examining a representative sample or

*†For statutory and source citations, see note to § 26.1.

samples thereof and making such tests as are necessary to determine its grade. For each inspection and grading, a certificate of grade shall be issued, and failure on the part of a licensed inspector to issue such certificate of grade will be regarded as a violation of this section.*† [Reg. 2, sec. 15]

26.18 When inspection required. Each licensed inspector whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect, grade, and issue a certificate of grade for each inspection of any grain of the kind mentioned in his license the inspection and grading of which is required under the Act, provided such grain be offered and made accessible during customary business hours at the point where he performs service as a licensed inspector, and under conditions which permit the taking of a representative sample or samples and the proper determination of the grade of the grain.*† [Reg. 2, sec. 16]

26.19 When inspector may inspect grain. Each licensed inspector may, at any time upon request of any interested party, inspect, grade, and certificate the grade of grain for which he holds a license, at any point, if the conditions permit the taking of a representative sample or samples and the proper determination of the grade of the grain, Provided That no licensed inspector shall perform inspection service at any regularly established inspection point other than the market in which his license is posted without notifying and securing in advance the approval of the grain supervisor in charge of the district in which the grain is to be inspected. Whenever a licensed inspector shall designate a point for inspection, in addition to his established inspection point, he shall in advance furnish such information regarding sampling, inspection equipment, and inspection arrangements, as may be required by the grain supervisor in charge of his district and shall secure approval by the grain supervisor of such designated point for inspection. Thereafter no other licensed inspector shall perform inspection and grading service at such designated point for inspection without securing in advance the approval of the grain supervisor. This section shall not be construed to prevent a State grain inspection department from transferring its employees to established inspection points where their services may be required within such State.*† [Reg. 2, sec. 17]

26.20 Inspection and grading to be based on representative sample. No licensed inspector shall issue a certificate of grade for any grain unless the inspection and grading thereof be based upon a correct and representative sample of the grain and be made under conditions which permit the determination of its true grade, except as provided in §§ 26.21, 26.33. Each licensed inspector shall take proper precautions to insure that no sample be exposed to manipulation which would deprive it of its representative character from the time of its collection until the grade be determined. No sample shall be deemed to be representative unless of the size, and procured in accordance with the methods, prescribed in instructions issued by the Chief of the Bureau of Agricultural Economics or by such officer of the Department as may be designated by him for the purpose, which

are in effect at the time of the inspection and grading.*† [Reg. 2, sec. 18]

26.21 Inspection and grading of submitted samples. Any licensed inspector may inspect and grade a submitted sample or package of grain, Provided That the certificate issued in such case clearly shows that the inspection and grading covers only the submitted sample or package as required by § 26.28.*† [Reg. 2, sec. 19]

26.22 Inspector not to be interested in grain. No licensed inspector shall issue a certificate of grade for any lot of grain in which he is directly or indirectly financially interested.*† [Reg. 2, sec. 20]

26.23 When sampler disqualified. No licensed inspector shall issue a certificate of grade for a lot or parcel of grain based upon a sample thereof drawn by a sampler who is not employed by him or his inspection department, or who is not an employee of the United States Department of Agriculture approved for the purpose by a grain supervisor, or who is interested, financially or otherwise, directly or indirectly, in the grain involved or in any grain elevator or warehouse or in the merchandising of grain, or who is in the employment of any person or corporation owning or operating a grain elevator or warehouse, or who the licensed inspector knows or has reason to believe is incompetent.*† [Reg. 2, sec. 21]

26.24 Reinspections. No licensed inspector shall issue a certificate of grade which supersedes a previous inspection and grading, except on the following conditions:

(a) When the application for reinspection has been filed not later than the close of business on the second business day following the date of the inspection to be superseded;

(b) Before the identity of the grain has been lost and before the grain has left the place where the inspection to be superseded was performed;

(c) When the superseding inspection and grading is based on a representative sample or samples;

(d) When the superseding inspection and grading is performed as promptly as possible after the application for reinspection has been filed; and

(e) When to the inspector's knowledge no Federal appeal has been taken from the original inspection and grading.* [Reg. 2, sec. 22, SRA, BAE 148, Apr. 2, 1935, as amended June 25, 1935]

26.25 Reinspection certificates. Whenever any licensed inspector shall issue a certificate of grade as the result of a reinspection, such reinspection certificate shall bear a conspicuous notation on the face thereof indicating the fact of such reinspection and shall clearly identify the certificate which it supersedes.*† [Reg. 2, sec. 23]

26.26 When inspection not to be made. No inspection shall be made of any grain which is to be loaded into a vessel, vehicle, or other container, if it appears that the hold, compartment, or other enclosure into which the grain is to be loaded is in such condition as to contaminate the grain or lower the grade.*† [Reg. 2, sec. 24]

26.27 Form of certificate to be approved. No certificate of grade shall be issued under the Act until its form has been approved

*†For statutory and source citations, see note to § 26.1.

by the Chief of the Bureau of Agricultural Economics, or by such officer of the Department as may be designated by him for the purpose.*† [Reg. 2, sec. 25]

26.28 Form of certificates. Each certificate of grade issued under the Act by a licensed inspector shall, except as permitted in § 26.27, embody within its written or printed terms:

(a) The caption Grain Inspection Certificate;

(b) A statement showing whether it is an original or a duplicate, or other copy;

(c) A statement showing whether the inspection represents an in, out, export, cargo, submitted sample, reinspection, "in" heavily loaded car, or otherwise, as the case may require. For "in" inspections of grain arriving at any inspection point in railway cars, except in the case of a heavily loaded car as provided in § 26.33, the certificate shall have stamped or printed upon either the face or the reverse side thereof substantially the following:

"This certificate is valid for 'in' inspection, but not for 'out' inspection, except when shipment is made in the same car not later than close of second business day after date hereof and without removal of grain or any change of its identity."

If printed or stamped on the reverse side, the words "See reverse side" shall be conspicuously stamped or printed on the face of the certificate;

(d) The name of the State, board of trade, chamber of commerce, exchange, or other organization, if any, by which the licensed inspector is regularly authorized or employed to inspect and grade grain;

(e) The name of the place at which the licensed inspector performs inspection service regularly;

(f) The consecutive number, or other means of identification, of the certificate;

(g) The date the inspection was performed;

(h) The statement that the certificate is issued by an inspector holding a license, under the United States Grain Standards Act (39 Stat. 482; 7 U.S.C. 71-87), to inspect and grade the kind of grain covered by the certificate;

(i) The location of the grain at the time of sampling, and its identification by (1) car initials, car number, and name of carrier or other owner or operator of track, or (2) name or other designation of boat or vessel and hold number or other place of stowage, or (3) name or other designation of elevator or warehouse and of bin or compartment, or (4) otherwise as the case may require;

(j) A statement of the approximate quantity of grain covered by the certificate stated either in carloads, or in bushels, or by weight;

(k) The kind of grain covered by the certificate;

(l) The grade of the grain, as determined by such licensed inspector, according to the official grain standards of the United States;

(m) A statement of the factor or factors which determine the grade, except in the case of grade No. 1. Certificates for grain of any grade may contain a statement of any or all factor determina-

tions. The requirements of this paragraph shall not be mandatory on certificates issued for export shipments;

(n) A statement of the test weight per bushel, except for Western barley and flaxseed, whether such factor determine the grade or not. In the case of wheat and rye the test weight shall be stated in terms of pounds and tenths of a pound. In the case of corn, barley, other than Western barley, oats, Feed oats, Mixed Feed oats, grain sorghums, and Mixed grain, the test weight shall be stated in terms of whole and half pounds, and for this purpose a fraction of a pound when equal to or greater than one-half shall be treated as one-half, and when less than one-half shall be disregarded. The requirements of this paragraph shall not be mandatory on certificates issued for export shipments;

(o) A statement of the moisture content in terms of whole percent and tenths of a percent for any grain graded "Tough"; and may contain a statement of the moisture content in terms of whole percent and tenths of a percent for any grain of any grade;

(p) The signature of the licensed inspector who determined the grade of the grain, affixed by him or by his authorized agent; and

(q) In case of an inspection of a submitted package or sample of grain, the words "Sample Inspection" in conspicuous type, together with a statement which shall clearly show that the inspection covers only the package or sample submitted and does not represent the grade of the lot or parcel of grain from which the portion submitted purports to have been taken.*† [Reg. 2, sec. 26]

26.29 Additional statements on certificates subject to approval. In addition to the matters required by the regulations in this subpart, the certificate of grade may include only such additional matter as may be approved by the Chief of the Bureau of Agricultural Economics, or by such officer of the Department as may be designated by him for the purpose.*† [Reg. 2, sec. 27]

26.30 Signature of inspector. When the signature of the licensed inspector is affixed by his authorized agent, the agent shall identify himself on such certificate in connection with such signature, by initialing or otherwise.*† [Reg. 2, sec. 28]

26.31 Date of inspection. In order to determine the date of inspection and grading at any point for the purposes of this subpart, each day shall be deemed to end at midnight unless otherwise fixed and announced for the convenience of the licensed inspectors and the trade at such point with the approval of the supervisor in charge of the Office of Federal Grain Supervision for the district in which such point is located.*† [Reg. 2, sec. 29]

26.32 Certification of crop year prohibited. No inspector licensed under the Act shall certify or otherwise indicate in writing that any grain for which standards have been established is "new crop", or "old crop", nor the year in which any such grain was produced.*† [Reg. 2, sec. 30]

26.33 "Heavily-loaded car" certificates. (a) In case any licensed inspector is called upon to make an "in" inspection and grading of a carload of grain, in sacks or in bulk, which (1) is so heavily loaded

*†For statutory and source citations, see note to § 26.1.

as to make it possible to secure only a door probe, shallow probe, door-sack probe, or interior surface sack-probe sample of the lot or parcel, (2) appears not to have been irregularly loaded, and (3) the licensed inspector has no reason to believe is so loaded as intentionally to conceal evidently inferior grain, he may, if the Act and the regulations be otherwise complied with, inspect and grade such lot or parcel of grain and issue a certificate of grade therefor, upon the conditions set forth below in paragraphs (b), (c), and (d) of this section.

(b) The inspection and grading of such grain must be based upon a sample which fairly represents all of the grain which can be reached in the exercise of care and diligence and the use of the customary probes in the drawing of samples from such grain.

(c) There must be legibly and conspicuously stamped or printed on the face of such certificate the words:

HEAVILY-LOADED CAR

(See reverse side of this certificate)

On the reverse side of such certificate the following shall be legibly stamped or printed:

Car so heavily loaded that the following sample only could be obtained:

- | | |
|---|--------------------------|
| (1) Door-probe sample_____ | <input type="checkbox"/> |
| (2) Shallow-probe sample_____ | <input type="checkbox"/> |
| (3) Door-sack probe sample_____ | <input type="checkbox"/> |
| (4) Interior surface sack-probe sample_____ | <input type="checkbox"/> |

The kind of sample obtained shall be indicated by placing a check mark in the square opposite the proper description.

(d) The daily record prescribed in §§ 26.39, 26.40 shall show, with respect to such grain, that the car was "heavily loaded", or shall show the abbreviation "h.l."

(e) No certificate of grade of the kind described in this section shall be issued for an out or en route inspection.

(f) Nothing in this section shall prevent any person, otherwise entitled under the Act and regulations, from taking an appeal from an inspection and grading of the kind described in this section, if a representative sample or samples be obtainable for the purpose of the appeal; nor shall anything in this section prevent any person, if he so desire, from having an unqualified inspection of the lot or parcel of grain performed by the same or any other licensed inspector, provided the grain be made accessible for sampling in accordance with the requirements of § 26.20.*† [Reg. 2, sec. 31]

26.34 Copies of superseded certificates. No licensed inspector shall issue, nor permit to be issued over his signature, any copy of a grain inspection certificate which has been superseded by a Federal appeal grade certificate, without first notifying the district grain supervisor and securing his approval of such issuance.*† [Reg. 2, sec. 32]

26.35 Inspection after appeal. In the case of grain which has been inspected and graded by a licensed inspector and regarding which an appeal has been taken to the Federal grain supervisor, no

licensed inspector in the same market shall thereafter issue a certificate of grade for the purpose of the same shipment or transaction without showing satisfactory reasons therefor and securing in advance the approval of the district grain supervisor.*† [Reg. 2, sec. 33]

26.36 Inspector not to prevent appeal. No inspector shall, directly or indirectly, by any means whatsoever, deter or prevent, or attempt to deter or prevent, any party from taking an appeal to the Secretary.*† [Reg. 2, sec. 34]

26.37 Methods of certification. Certificates of grade issued by licensed inspectors shall conform to the regulations in this subpart and shall meet the requirements set forth in instructions, pursuant to this section, issued from time to time by the Chief of the Bureau of Agricultural Economics, or by such officer of the Department as may be designated by him for the purpose.*† [Reg. 2, sec. 35]

26.38 Certification of grain in vessels. In the inspection and grading of lots, parcels, and cargoes of grain loaded aboard boats, barges, and other vessels licensed inspectors shall be governed by the following requirements:

(a) If such a lot, parcel, or cargo tendered for inspection and grading be uniform in quality and condition, the grade shall be based upon an average sample thereof;

(b) If such lot, parcel, or cargo so tendered is not uniform in quality and condition by reason of the presence therein of a material portion of grain of a different grade, the licensed inspector shall consider the portions of such lot, parcel, or cargo which are of different grades as separate lots tendered for inspection, and shall separately inspect, grade, and certificate as to grade such different portions; and each such certificate of grade shall bear a statement to the effect that the grain to which it applies has been loaded on board with other grain, the grade, description, and approximate quantity of which shall be specified.*† [Reg. 2, sec. 36]

26.39 Inspector to make records. Each licensed inspector shall keep complete and correct records of all grain inspected and graded by him, which shall be open for inspection and examination by any grain supervisor or by any person designated for the purpose by the Chief of the Bureau of Agricultural Economics, and which shall contain, separately for each lot or parcel of grain inspected and graded by such licensed inspector, the information required for compliance with § 26.40.*† [Reg. 2, sec. 37]

26.40 Record to be made accessible. Each licensed inspector shall, as soon as possible after grading any grain and not later than the close of business on the next following business day, make accessible to the interested parties at the place where his license is posted, a record of each lot or parcel of grain inspected and graded by him, showing (a) the date the grading was performed; (b) the kind and grade of the grain; (c) its location at the time of sampling and its identification by either (1) car initials, car number, and name of carrier or other owner or operator of track, or (2) name or other designation of boat or vessel and hold number or other place of

*†For statutory and source citations, see note to § 26.1.

stowage, or (3) name or other designation of elevator or warehouse and of bin or compartment, or (4) otherwise as the case may require; (d) the name of the person for whom the service was performed, or his agent; and (e) the name of such licensed inspector. Copies, containing the information required for compliance with this section, of the certificates of grade issued by such licensed inspector may be used as the record required by this section. The sample upon which the certificate of grade is based, shall, while in the possession or under the control of the licensed inspector or his inspection department, be part of the record of such inspection and as such shall be made accessible to any grain supervisor in the district in which such inspection is made.*† [Reg. 2, sec. 38]

26.41 Copies of certificates to be filed with supervisor. Each licensed inspector, as soon as possible after grading any grain and not later than the close of business on the next following business day, shall transmit to the Office of Federal Grain Supervision in the district in which the grain was located at the time of sampling, a true copy of the certificate of grade therefor.*† [Reg. 2, sec. 39]

26.42 Supervisor may extend time limit. Upon a showing by a licensed inspector, or in his behalf by his inspection department, of an emergency or other good cause, the grain supervisor in charge of the Office of Federal Grain Supervision may extend the time prescribed for compliance by such licensed inspector with any one or more of the provisions of §§ 26.39–26.41.*† [Reg. 2, sec. 40]

26.43 Suspension, cancelation, and revocation of licenses—
(a) Suspension or cancelation upon request. Upon a written request and a satisfactory statement of reasons therefor, submitted by a licensed inspector, the Secretary may, without hearing, suspend for a definite period of time, or may cancel, the license issued to such licensed inspector.

(b) Suspension, pending investigation. Pending investigation, the Secretary, whenever he deems necessary, may suspend a license temporarily, without hearing.

(c) Suspension or revocation for cause. In all other cases, before a license is suspended or revoked, the licensed inspector involved shall be furnished by the Secretary, or by an official of the Department designated by him for the purpose, a written notice to show cause why his license should not be suspended or revoked for reasons specified in such notice, and shall be allowed a reasonable time within which to answer the same in writing and submit affidavits and other proper evidence. If requested by such licensed inspector, within the time allowed for answering, or in the discretion of the Chief of the Bureau of Agricultural Economics, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by the Chief of the Bureau of Agricultural Economics, or an officer of the Department designated by him for the purpose.

(d) Service of notice. Service of such notice shall be made by delivering the same to the licensed inspector, but if he cannot be found, in the exercise of reasonable diligence, at the inspection point where his license is posted as required by § 26.11, such service shall

be made by delivering the notice to an adult member of his immediate family or by registered mail to his last known residence address. Service by registered mail shall be deemed to have been made on the date shown on the registry return receipt.

(e) **Hearings.** Hearings for the purposes of this section shall be in accordance with § 26.78. A copy of the notice to show cause, the answer thereto, copies of all other notices and orders, and all the evidence shall be made a part of the records of the Department.*† [Reg. 2, sec. 41]

26.44 Issuance of licenses after suspension or cancelation. Upon a written request and satisfactory evidence of competency, submitted by a person whose license has been suspended or canceled, the Secretary may terminate the period of suspension or may issue to such persons a new license for the kinds of grain covered by the canceled license.*† [Reg. 2, sec. 42]

26.45 Surrender of license. Any licensed inspector who is not making inspections regularly under his license, shall, upon request of the district grain supervisor, surrender his license to be suspended or canceled as the Secretary may decide. When any licensed inspector, who received his license by reason of his being a State grain inspector, ceases to be a State grain inspector, he shall, upon request of the district grain supervisor, surrender his license for cancelation.*† [Reg. 2, sec. 43]

APPEALS

26.46 When appeal may be taken. An appeal shall be taken (a) before the grain leaves the place where the inspection appealed from was made; (b) before the identity of the grain has been lost; (c) when the conditions otherwise are as prescribed in section 6 of the Act (39 Stat. 484; 7 U.S.C. 78); and (d) as promptly as possible, but not later than the close of business on the second business day following the date of the inspection appealed from, except as provided in § 26.51.*† [Reg. 3, sec. 1]

26.47 Appeals; how taken. An appeal shall be taken to the Secretary by filing an application for appeal in writing or by telegraph, in the Office of the Federal Grain Supervision in the district in which the inspection appealed from was made: Provided, That in his discretion the officer in charge of General Field Headquarters of Federal Grain Supervision may authorize the entertaining of an appeal in another Office of Federal Grain Supervision.*† [Reg. 3, sec. 2]

26.48 Advance notice of appeal. Any party desiring to appeal may, in advance, transmit to the proper Office of Federal Grain Supervision, by telegraph, telephone, or otherwise, such information as may be necessary to enable a grain supervisor in such office to proceed to the examination of the grain involved.*† [Reg. 3, sec. 3]

26.49 Contents of application. An application, in the form prescribed by the Department, signed by the appellant, shall state: (a) that the grain involved was shipped, delivered for shipment,

*†For statutory and source citations, see note to § 26.1.

consigned for sale, sold for shipment, or offered for sale for shipment in interstate or foreign commerce; (b) the identification and definite location of the grain at the time of taking the appeal; (c) the names and post-office addresses of all other parties interested in the grain involved, if any; and (d) such other information as may be required by the Office of Federal Grain Supervision in which such application is filed or by the Chief of the Bureau of Agricultural Economics.*† [Reg. 3, sec. 4]

26.50 Inspection certificate; filing. The appellant may be required to file or cause to be filed, in the Office of Federal Grain Supervision mentioned in § 26.47, the certificate of grade for the grain involved issued by the licensed inspector from whose inspection the appeal is taken, if the same be in his possession. If such certificate be in the custody or control of the licensed inspector, he shall upon request, immediately transmit or deliver it to said office.*† [Reg. 3, sec. 5]

26.51 Extension of time. Upon satisfactory showing of the discovery of fraud, or that on account of distance the time allowed for filing is not sufficient, or other good cause, the grain supervisor in charge of the office mentioned in § 26.47 may permit the filing of an application after the time prescribed therefor in this subpart, and a statement of such action shall be included in the record of such appeal.*† [Reg. 3, sec. 6]

26.52 Date of filing. Each application, or statement, shall be deemed filed in an Office of Federal Grain Supervision when delivered thereto.*† [Reg. 3, sec. 7]

26.53 Receipt of papers to be recorded. The official of the Department receiving any paper offered for filing shall note thereon, or on a record kept by him for the purpose, the place and date of its receipt.*† [Reg. 3, sec. 8]

26.54 Opportunity for hearing. Opportunity for hearing will be afforded interested parties as provided in section 6 of the Act (39 Stat. 484; 7 U.S.C. 78), if application therefor be made to the grain supervisor entertaining the appeal within 10 days after the issuance of the final Federal appeal grade certificate. If no request for hearing be made such hearing will be deemed waived; but the grain supervisor may order a hearing at any time.*† [Reg. 3, sec. 9]

26.55 Notice of hearing. Whenever a hearing is set pursuant to § 26.54, notice of the time and place thereof shall be served a reasonable time in advance upon each party or his agent.*† [Reg. 3, sec. 10]

26.56 Oral hearing. When a hearing at which oral evidence may be submitted by the parties is granted or ordered, it shall be held before the Secretary, or before such officer of the Department as may be designated by the Secretary, or by the Chief of the Bureau of Agricultural Economics, for the purpose.*† [Reg. 3, sec. 11]

26.57 Testimony under oath. The testimony of witnesses at an oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him.

Such hearing may be postponed or adjourned by him from time to time.*† [Reg. 3, sec. 12]

26.58 Production of books and papers. Any official before whom an appeal is heard may require the production and submission in evidence by any party to such appeal of all books, papers, and documents in his custody or under his control, evidencing or relating to the transaction, the grain or other matter, involved in, or relevant to, the appeal.*† [Reg. 3, sec. 13]

26.59 When appeal may be dismissed. A grain supervisor may dismiss any appeal filed in his office, if it appear that the Secretary is without jurisdiction to make such determination in accordance with the Act, or for noncompliance with the regulations in this subpart. Any application, statement, or other paper filed by any party may be stricken from the files if it fail to comply with §§ 26.46–26.65. Upon dismissal or withdrawal of an appeal the certificate of grade filed therein shall be immediately returned to the person by whom filed, or delivered upon his written order. No appeal may be withdrawn after the issuance of a Federal appeal grade certificate.*† [Reg. 3, sec. 14]

26.60 Supervisor to determine grade. The sample or samples of grain involved in an appeal, complying with §§ 26.71, 26.72, shall be examined as soon as possible, such tests shall be applied as are necessary, the papers and all other available evidence shall be carefully considered, and, except as provided in § 26.59, a Federal appeal grade certificate shall be issued by the grain supervisor entertaining the appeal, showing the grade assigned by him to such grain which shall be the final Federal appeal grade certificate unless superseded as provided in § 26.62. Such Federal appeal grade certificate shall supersede the certificate of grade for the grain involved, and such inspection certificate shall not thereafter represent the grade of the grain.*† [Reg. 3, sec. 15]

26.61 Objection to supervisor's grade may be filed. Any party to an appeal may, not later than the close of business on the next business day after the issuance of the Federal appeal grade certificate mentioned in § 26.60, file with the grain supervisor issuing the same a statement objecting to the grade shown. The said grain supervisor may, for good cause shown, permit the filing of such statement after the time prescribed therefor in this section.*† [Reg. 3, sec. 16]

26.62 Review by board. If such objection be filed as provided in § 26.61, a sample or samples of the grain involved, the papers and all other evidence shall be immediately submitted to a board of grain supervisors constituted for the purpose by the Chief of the Bureau of Agricultural Economics, which board shall carefully consider the papers and all available evidence, and make such examination and apply such tests as may be necessary to determine the grade of the grain. Such board shall, except as provided in § 26.59, issue or cause to be issued a Federal grade certificate showing the grade assigned by such board to the grain, which Federal appeal grade certificate shall supersede the Federal appeal grade certificate previously

*†For statutory and source citations, see note to § 26.1.

issued for such grain and shall be the final Federal appeal grade certificate issued.*† [Reg. 3, sec. 17]

26.63 Direct appeal to board. Such board may, upon showing of special urgency, hear an appeal in the first instance without compliance with §§ 26.60, 26.61, and in accordance with the procedure described in § 26.62.*† [Reg. 3, sec. 18]

26.64 Original and copies of Federal appeal grade certificate. Every Federal appeal grade certificate shall be numbered and shall, by number or otherwise, identify the certificate which it supersedes. The original of the Federal appeal grade certificate, issued by the grain supervisor and marked as such, shall be delivered to the party, or upon the written order of the party, who filed the appeal. The original of the Federal appeal grade certificate, issued by a board of grain supervisors and marked as such shall be delivered to the party, or upon the written order of the party who filed the objection to the supervisor's grade. A copy of each Federal appeal grade certificate marked as such shall be furnished to each interested party, if any, other than the party to whom, or upon whose order the original Federal appeal grade certificate is issued.*† [Reg. 3, sec. 19]

26.65 Findings of the Secretary. A copy of the findings of the Secretary will be furnished to any interested party upon request.*† [Reg. 3, sec. 20]

DISPUTES

26.66 Disputes; submission. A dispute shall be submitted to the Secretary by filing a complaint in conformity with § 26.69, either in writing or by telegraph, in the Office of Federal Grain Supervision in the district where the grain is then located.*† [Reg. 4, sec. 1]

26.67 When dispute referred. Such complaint shall be filed as promptly as possible, but not later than the close of business on the second business day after the grain involved becomes subject to examination by the contracting parties at the point where the grade is disputed. The grain supervisor hearing the dispute may, for good cause shown, permit the filing of such complaint after the time prescribed in this section.*† [Reg. 4, sec. 2]

26.68 Advance notice of dispute. Any party desiring to refer a dispute may transmit, in advance, to the proper Office of Federal Grain Supervision by telegraph, telephone, or otherwise, such information as may be necessary to enable a grain supervisor in such office to proceed to the examination of the grain involved.*† [Reg. 4, sec. 3]

26.69 Contents of complaint. A complaint signed by the complainant shall state (a) the name and post-office address of each party; (b) the kind of grain and the grade thereof, claimed by each party; (c) the respective interests of the complainant and the respondent in the transaction; (d) that the grain involved was sold, offered for sale, or consigned for sale by grade, and shipped in interstate or foreign commerce without inspection from a place at which there is no licensed inspector to a place at which there is no licensed inspector, and the points of shipment and destination; (e) the time when the grain became subject to examination by the party receiving

it, at the point where the grade is disputed; (f) the location of the grain and its identification; and (g) any other material facts.*† [Reg. 4, sec. 4]

26.70 Appeal regulations applicable to disputes. The provisions of §§ 26.46–26.65 relating to appeals, which in substance are applicable to disputes, and in respect to which no special provision is made by this subpart, are hereby made applicable to disputes.*† [Reg. 4, sec. 5]

SAMPLES IN APPEALS AND DISPUTES

26.71 Representative samples. No appeal or dispute shall be determined except upon the basis of a representative sample or samples of the grain involved. Such samples shall be drawn by a person authorized for the purpose by either the Chief of the Bureau of Agricultural Economics or the grain supervisor in charge of the office of Federal Grain Supervision in which the appeal or dispute is heard, provided the parties in interest shall have the grain made accessible and placed under such conditions as to permit the taking of a representative sample.*† [Reg. 5, sec. 1]

26.72 Representative samples; procurement. For the purposes of an appeal or dispute no sample shall be deemed representative unless of the size, and procured in accordance with the method, prescribed in instructions issued by the Chief of the Bureau of Agricultural Economics, or by an officer of the Department designated by him for the purpose, in effect at the time of taking the appeal or referring the dispute.*† [Reg. 5, sec. 2]

DEPARTMENT CHARGES AND FEES

26.73 Fees and charges. The minimum fee in an appeal or a dispute shall be \$1 if it involves the grade of grain in a wagon or truck or in a lot of 75 sacks or less. In any other appeal or dispute the minimum fee shall be \$1.50. When the total fee in any appeal or dispute at the rates specified below in this section would amount to more than the minimum, the fee in the appeal or dispute shall be fixed as follows:

- (a) For bulk or sacked grain in carload lots, \$1.50 per car;
- (b) For bulk or sacked grain in wagon or truck lots, \$1 per wagon or truck;
- (c) For bulk or sacked grain in other than carload, truck, or wagon lots, 50 cents per 1,000 bushels or fraction thereof, except as provided in the first sentence of this section.

(d) Such further charges may be made for telegrams, express, parcel post, registry fees, traveling expenses, and other items paid or incurred by the Department on account of a dispute or an appeal, and for oral hearings, as will reimburse the Department; all charges above the minimum, and all of such additional items, to be determined in each case by the Secretary. Unless otherwise stated in the findings in any appeal, the regular fees as prescribed by §§ 26.73–26.75, and no further charges, shall be deemed to be fixed and assessed.*† [Reg. 6, sec. 1]

*†For statutory and source citations, see note to § 26.1.

26.74 Fees; against whom assessed. The fees so fixed shall, in case of an appeal, be assessed against the appellant, and in case of a dispute, against the complainant.*† [Reg. 6, sec. 2]

26.75 Deposits. For each appeal or dispute filed in any Office of Federal Grain Supervision there shall be delivered to such office a check, (certified, if required by the Chief of the Bureau of Agricultural Economics), or a post-office or express money order, payable to the order of "Treasurer of the United States", for an amount sufficient to cover the fees, to be determined as follows:

The minimum deposit in each appeal or dispute shall, in case of grain in a wagon or truck, or in a lot of 75 sacks or less, be \$1, and in all other cases, \$1.50. When the total in any appeal or dispute at the rates specified in § 26.73 would amount to more than the minimum of \$1 or \$1.50, as the case may be, the deposit shall be at said rates. Additional sums may be required by the official hearing the appeal or dispute when deemed necessary by him as deposits. Any part of such deposit which may remain after payment of the fee assessed shall be returned to the party depositing the same. In case an appeal be sustained the amount of the fee assessed shall be refunded. All fees not covered by advance deposits shall be payable immediately upon notice of the assessment of the fee, and shall be paid by check (certified, if required by the Chief of the Bureau of Agricultural Economics), or a post-office or express money order drawn to the order of "Treasurer of the United States."

The grain supervisor in charge of an Office of Federal Grain Supervision shall hold each deposit in his custody until the final Federal appeal grade certificate or final Federal dispute grade certificate shall have been issued, and it has been determined, in case of an appeal, whether the same has been sustained or not sustained. In case an appeal is not sustained, and in case of a dispute, the sum received by the grain supervisor as a deposit, shall be transmitted to the Department for deposit in the Treasury of the United States of such amount as may be due the Government, and for the refund of any excess deposit to the depositor thereof.* [Reg. 6, sec. 3, SRA, BAE 148, Apr. 2, 1935, as amended May 19, 1938]

HEARINGS

26.76 Section 5 cases. In case a hearing is ordered in connection with an alleged violation of, or an investigation under, section 5 of the Act (39 Stat. 483; 7 U.S.C. 77), a written notice of the time and place of such hearing shall be given by the Secretary or the Chief of the Bureau of Agricultural Economics to the owner or shipper of the grain involved, to the licensed inspector, if any, who inspected the grain, and any other interested parties, such reasonable time in advance as will enable the persons notified, if they so desire, to attend the hearing. Persons notified shall, in advance of the hearing, be furnished with a written statement of the charges or subject matter of the investigation, and shall be afforded opportunity to submit evidence in their own behalf.*† [Reg. 7, sec. 1]

26.77 Hearings; notice and record. An oral hearing, of which reasonable notice shall be given, shall be held before and at a time and place fixed by the Chief of the Bureau of Agricultural Economics, or an officer of the Department designated by him for the purpose. Such hearing shall be in accordance with § 26.78. A copy of the charges, copies of all other notices and orders, and all the evidence shall be made a part of the records of the Department. The record shall be transmitted to the Secretary for his consideration.*† [Reg. 7, sec. 2]

26.78 Conduct of hearings. Hearings under this subpart shall proceed in accordance with this section. The testimony of witnesses shall be upon oath or affirmation administered by the officer before whom the hearing is held, when required by him. The officer before whom an oral hearing is held may exclude obviously irrelevant evidence, but the party offering such evidence may state what he expects to prove thereby. Any witness may, in the discretion of the officer holding the hearing, be examined separate and apart from all other witnesses except the interested parties. Such hearing, for good cause appearing to the satisfaction of such officer, may be postponed or adjourned by him from time to time. When good cause for such action appears to the Chief of the Bureau of Agricultural Economics, the evidence of any material witness may be taken under oath or affirmation by deposition. Such deposition shall be taken after reasonable notice to the parties interested and at a time and place and before a person designated for the purpose by the Chief of the Bureau of Agricultural Economics. The expense of taking such deposition shall be borne by the party in whose behalf it is taken. A true copy of every written entry in the records of the Department, made by an officer or employee thereof in the course of his official duty, which is relevant to the issues involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Arguments shall be excluded from the record of any hearing, but may be submitted separately in writing by the party making the same. Except as otherwise provided in this section, the expense of reducing the evidence to writing for the purposes of the record in any hearing shall be borne by the Department.*† [Reg. 7, sec. 3]

PROVISIONS GOVERNING GRAIN MERCHANDISING

26.79 Where inspection obtained. For each shipment of grain in interstate or foreign commerce, from or to a place where a licensed inspector is located, which is sold, offered for sale, or consigned for sale by grade, an inspection by a licensed inspector must, in accordance with section 4 of the Act (39 Stat. 483; 7 U.S.C. 76), be obtained at the shipping point, at some convenient point en route, or at destination.*† [Reg. 8, sec. 1]

26.80 Limitations on use of "heavily-loaded car" certificate. For the purposes of the Act, and "in" inspection "heavily-loaded car" certificate shall not be valid to represent the grade of the grain

*†For statutory and source citations, see note to § 26.1.

covered thereby for an “out” shipment from the place of such inspection.*† [Reg. 8, sec. 2]

26.81 Arrival inspection valid for “out” shipment of reconditioned cars. An “in” inspection of grain in a car performed on arrival at an inspection point, except in the case of a heavily-loaded car, shall also be deemed valid for the purpose of “out” shipment from such inspection point under the following conditions only:

(a) When the “out” shipment or delivery for shipment is made not later than the close of the second business day after the date of such inspection;

(b) When the grain covered by the inspection has not in the meantime been removed or transferred from the car in which it was inspected;

(c) When the identity of the grain has not been changed; and

(d) When the certificate of grade bears the statement regarding its validity for “in” and “out” inspection as required by § 26.28 (c).

Nothing contained in this section shall be construed as authorizing an inspector to refuse to comply with a request for another inspection and the issuance of a regular “out” or other inspection certificate when necessary for the purposes of the Act and regulations.*† [Reg. 8, sec. 3]

26.82 Certificate which has been superseded shall not represent grade of grain. When a certificate of grade issued by a licensed inspector shall have been superseded, under this subpart, by a certificate issued as a result of a reinspection, or by a Federal appeal grade certificate, such superseded certificate of grade shall not thereafter represent the grade of the lot or parcel of grain described therein.*† [Reg. 8, sec. 4]

26.83 Final appeal or dispute grade certificate supersedes all previous certificates. No Federal appeal grade certificate or Federal dispute grade certificate shall represent the grade of a lot or parcel of grain described therein after it shall have been superseded, under this subpart, by a final Federal appeal grade certificate or final Federal dispute grade certificate.*† [Reg. 8, sec. 5]

26.84 Required inspections not to be prevented. Whenever, under the Act and regulations, inspection and grading of any grain by a licensed inspector is required, no person entitled under the Act and regulations to have such inspection and grading performed, shall be deprived of his right thereto by any rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization, or by any contract, agreement, or understanding whatsoever.*† [Reg. 8, sec. 6]

26.85 Right of appeal or dispute not to be impaired. No rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization, nor any contract, agreement, or understanding, shall be ground for refusing to hear and determine any appeal taken or any dispute referred to the Secretary in compliance with the Act and regulations.*† [Reg. 8, sec. 7]

26.86 Uninspected grain. Whenever any grain for which standards shall have been fixed and established under the Act is sold, offered for sale, or consigned for sale by any of the grades fixed therefor in the official grain standards of the United States, and shipped in interstate or foreign commerce without inspection from a place at which there is no inspector licensed under the Act to a place at which there is no such inspector, the shipper shall promptly transmit to the purchaser or consignee an invoice covering such grain, which invoice shall bear a statement, written, typewritten, or affixed with a rubber stamp, to the effect that the grain involved has not been inspected by a licensed inspector and that the grade thereof is subject to dispute under the Act. Such statement may be worded as follows: "This grain not officially inspected; grade subject to dispute privilege under United States Grain Standards Act." Any such shipper shall, upon request by the Bureau of Agricultural Economics, submit to said Bureau a statement showing the following with respect to any shipment or with respect to such shipments made within given periods of time to be specified by the said Bureau: (a) The date of shipment, (b) the kind of grain, (c) the quantity thereof, (d) the grade by which it is sold, offered for sale, or consigned for sale, (e) the point of shipment and destination thereof, (f) the name of the initial carrier, (g) the car initial, and number, or the name or other designation of the vessel, boat, barge, or vehicle, as the case may be, in which such grain is shipped, (h) the name of the shipper, and (i) the name of the consignee.*† [Reg. 8, sec. 8]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES FOR WHEAT¹

26.101 Terms defined. For the purposes of the official grain standards of the United States for wheat:

Wheat. Wheat shall be any grain which, before the removal of dockage, consists of 50 percent or more of wheat and not more than 10 percent of other grains for which standards have been established under the provisions of the United States Grain Standards Act (39 Stat. 482; 7 U.S.C. 71–87). The term wheat in these standards shall not include emmer, spelt, einkorn, Polish wheat, and poulard wheat.

Classes. Wheat shall be divided into seven classes, as follows: class I, Hard Red Spring wheat; class II, Durum wheat; class III, Red Durum wheat; class IV, Hard Red Winter wheat; class V, Soft Red Winter wheat; class VI, White wheat; and class VII, Mixed wheat.

Grades. Wheat shall be graded and designated according to the respective grade requirements of the numerical grades and Sample grade of its appropriate class or subclass, and according to the special grades when applicable.**†† [p. 2]

**§§ 26.101 to 26.563, inclusive, issued under the authority contained in sec. 2, 39 Stat. 482; 7 U.S.C. 74.

††The source of §§ 26.101 to 26.563, inclusive, (except for the amendments noted in the text,) is Official grain standards of the United States Department of Agriculture, Mar. 31, 1934. (SRA, BAE 144)

¹The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

*†For statutory and source citations, see note to § 26.1.

26.102 Hard Red Spring wheat (class I); subclasses defined. This class shall include all varieties of hard red spring wheat, and may include not more than 10 percent of wheats of other classes. This class shall be divided into three subclasses, as follows:

SUBCLASS (A) DARK NORTHERN SPRING

This subclass shall include wheat of the class Hard Red Spring wheat consisting of 75 percent or more of dark, hard, and vitreous kernels. This subclass shall not include more than 10 percent of wheat of the variety Humpback.

SUBCLASS (B) NORTHERN SPRING

This subclass shall include wheat of the class Hard Red Spring wheat consisting of more than 25 percent but less than 75 percent of dark, hard, and vitreous kernels. This subclass shall not include more than 10 percent of wheat of the variety Humpback.

SUBCLASS (C) RED SPRING

This subclass shall include wheat of the class Hard Red Spring wheat consisting of not more than 25 percent of dark, hard, and vitreous kernels. This subclass shall also include wheat of the class Hard Red Spring wheat consisting of more than 10 percent of the variety Humpback.

*† [p. 2]

26.103 Hard Red Spring wheat; grade requirements.

Class I, Hard Red Spring wheat: Grade requirements for (A) Dark Northern Spring, (B) Northern Spring, (C) Red Spring

Grade No.	Mini- mum test weight per bushel	Maximum limits of—					
		Damaged ker- nels (wheat and other grains)		Foreign material		Wheats of other classes	
		Total	Heat- dam- aged	Total	Mat- ter ex- cept other grains	Total	Durum and/or Red Durum
	Pounds	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent
1 Heavy ¹ -----	60	2	0. 1	1	0. 5	5	2
1-----	58	2	. 1	1	. 5	5	2
2-----	57	4	. 2	2	1. 0	10	3
3-----	55	7	. 5	3	2. 0	10	5
4-----	53	10	1. 0	5	3. 0	10	10
5-----	50	15	3. 0	7	5. 0	10	10
Sample grade-----	Sample grade shall include wheat of the subclass Dark Northern Spring, or Northern Spring, or Red Spring, which does not come within the requirements of any of the grades from No. 1 Heavy to No. 5, inclusive; or which contains more than 16 percent of moisture, or more than 10 percent of cracked kernels; or which contains inseparable stones and/or cinders; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.						

¹ Applies to each of the subclasses Dark Northern Spring, Northern Spring, and Red Spring.

*† [p. 3]

26.104 Durum wheat (class II); subclasses defined. This class shall include all varieties of common durum wheat, and may include not more than 10 percent of wheats of other classes. This class shall be divided into three subclasses, as follows:

SUBCLASS (A) HARD AMBER DURUM

This subclass shall include wheat of the class Durum wheat consisting of 75 percent or more of hard and vitreous kernels of amber color.

SUBCLASS (B) AMBER DURUM

This subclass shall include wheat of the class Durum wheat consisting of 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

*†For statutory and source citations, see note to § 26.101.

SUBCLASS (C) DURUM

This subclass shall include wheat of the class Durum wheat consisting of less than 60 percent of hard and vitreous kernels of amber color.

*† [p. 3]

26.105 Red Durum wheat (class III) defined. This class shall include all varieties of red durum wheat, and may include not more than 10 percent of wheats of other classes.*† [p. 3]

26.106 Durum wheat and Red Durum wheat; grade requirements.

Class II, Durum wheat, and class III, Red Durum wheat: Grade requirements for the subclasses (A) Hard Amber Durum, (B) Amber Durum, and (C) Durum, of the class Durum wheat, and for the class Red Durum wheat.

Grade No.	Mini- mum test weight per bushel	Maximum limits of—					
		Damaged kernels (wheat and other grains)		Foreign material		Wheats of other classes	
		Total	Heat- dam- aged	Total	Mat- ter ex- cept other grains	Total	SoftRed Winter, White, and Red Durum, single or com- bined ¹
	Pounds	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent
1-----	60	2	0. 1	1	0. 5	² 5	3
2-----	58	4	. 2	2	1. 0	10	5
3-----	56	7	. 5	3	2. 0	10	10
4-----	54	10	1. 0	5	3. 0	10	10
5-----	51	15	3. 0	7	5. 0	10	10
Sample grade-----	Sample grade shall include wheat of the subclass Hard Amber Durum, or Amber Durum, or Durum, or wheat of the class Red Durum wheat, which does not come within the requirements of any of the grades from No. 1 to No. 5, inclusive; or which contains more than 16 percent of moisture, or more than 10 percent of cracked kernels; or which contains inseparable stones and/or cinders; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.						

¹ These specifications do not apply to the class Red Durum wheat, or to the subclass Durum.

² No. 1 Red Durum may contain 10 percent of wheats of other classes.

*† [p. 4]

26.107 Hard Red Winter wheat (class IV); subclasses defined. This class shall include all varieties of hard red winter wheat, and may include not more than 10 percent of wheats of other classes. This class shall be divided into three subclasses, as follows:

SUBCLASS (A) DARK HARD WINTER

This subclass shall include wheat of the class Hard Red Winter wheat consisting of 75 percent or more of dark, hard, and vitreous kernels.

SUBCLASS (B) HARD WINTER

This subclass shall include wheat of the class Hard Red Winter wheat consisting of more than 25 percent but less than 75 percent of dark, hard, and vitreous kernels.

SUBCLASS (C) YELLOW HARD WINTER

This subclass shall include wheat of the class Hard Red Winter wheat consisting of not more than 25 percent of dark, hard, and vitreous kernels.

*† [p. 4]

26.108 Hard Red Winter wheat; grade requirements.

Class IV, Hard Red Winter wheat: Grade requirements for (A) Dark Hard Winter, (B) Hard Winter, (C) Yellow Hard Winter

Grade No.	Mini- mum test weight per bushel	Maximum limits of—					
		Damaged ker- nels (wheat and other grains)		Foreign material		Wheats of other classes	
		Total	Heat- dam- aged	Total	Mat- ter ex- cept other grains	Total	Durum and/or Red Durum
	Pounds	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent
1-----	60	2	0. 1	1	0. 5	5	1.
2-----	58	4	. 2	2	1. 0	10	2.
3-----	56	7	. 5	3	2. 0	10	3.
4-----	54	10	1. 0	5	3. 0	10	10.
5-----	51	15	3. 0	7	5. 0	10	10.
Sample grade-----	Sample grade shall include wheat of the subclass Dark Hard Winter, or Hard Winter, or Yellow Hard Winter, which does not come within the requirements of any of the grades from No. 1 to No. 5, inclusive; or which contains more than 15.5 percent of moisture, or more than 10 percent of cracked kernels; or which contains inseparable stones and/or cinders; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.						

*† [p. 5]

*†For statutory and source citations, see note to § 26.101.

26.109 Soft Red Winter wheat (class V); subclasses defined. This class shall include all varieties of soft red winter wheat and may include not more than 10 percent of wheats of other classes. This class shall be divided into two subclasses, as follows:

SUBCLASS (A) RED WINTER

This subclass shall include wheat of the class Soft Red Winter wheat consisting of both light and dark colored kernels. This subclass shall not include more than 10 percent of Soft Red Winter wheat grown west of the Great Plains area of the United States.

SUBCLASS (B) WESTERN RED

This subclass shall include wheat of the class Soft Red Winter wheat consisting of more than 10 percent of wheat of this class grown west of the Great Plains area of the United States.

*† [p. 5]

26.110 Soft Red Winter wheat; grade requirements.

Class V, Soft Red Winter wheat: Grade requirements for (A) Red Winter, (B) Western Red

Grade No.	Mini- mum test weight per bushel	Maximum limits of—					
		Damaged ker- nels (wheat and other grains)		Foreign material		Wheats of other classes	
		Total	Heat- dam- aged	Total	Mat- ter ex- cept other grains	Total	Durum and/or Red Durum
	Pounds	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent
1-----	60	2	0. 1	1	0. 5	5	0. 5
2-----	58	4	. 2	2	1. 0	10	1. 0
3-----	56	7	. 5	3	2. 0	10	2. 0
4-----	54	10	1. 0	5	3. 0	10	10. 0
5-----	51	15	3. 0	7	5. 0	10	10. 0
Sample grade-----	Sample grade shall include wheat of the subclass Red Winter, or Western Red, which does not come within the requirements of any of the grades from No. 1 to No. 5, inclusive; or which contains more than 15.5 percent of moisture, or more than 10 percent of cracked kernels; or which contains inseparable stones and/or cinders; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.						

*† [p. 5]

*†For statutory and source citations, see note to § 26.101.

26.111 White wheat (class VI); subclasses defined. This class shall include all varieties of white wheat, whether winter or spring grown, and may include not more than 10 percent of wheats of other classes. This class shall be divided into four subclasses, as follows:

SUBCLASS (A) HARD WHITE

This subclass shall include all wheat of the class White wheat consisting of 75 percent or more of hard (not soft and chalky) kernels. This subclass shall not include more than 10 percent of Sonora wheat or wheat of the white club varieties, either singly or in any combination.

SUBCLASS (B) SOFT WHITE

This subclass shall include wheat of the class White wheat consisting of less than 75 percent of hard (not soft and chalky) kernels. This subclass shall not include more than 10 percent of Sonora wheat or wheat of the white club varieties, either singly or in any combination.

SUBCLASS (C) WHITE CLUB

This subclass shall include wheat of the class White wheat consisting of Sonora wheat or wheat of the white club varieties, either singly or in any combination. This subclass shall not include more than 10 percent of common white wheat other than Sonora, either singly or in any combination.

SUBCLASS (D) WESTERN WHITE

This subclass shall include wheat of the class White wheat which contains more than 10 percent of Sonora wheat or wheat of the white club varieties, either singly or in any combination, and which also contains more than 10 percent of common white wheat other than Sonora.

*† [p. 6]

26.112 White wheat; grade requirements.

Class VI, White wheat: Grade requirements for (A) Hard White, (B) Soft White, (C) White Club, (D) Western White

Grade No.	Mini- mum test weight per bushel	Maximum limits of—					
		Damaged ker- nels (wheat and other grains)		Foreign material		Wheats of other classes	
		Total	Heat- dam- aged	Total	Mat- ter ex- cept other grains	Total	Durum and/or Red Durum
	Pounds	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent	Per- cent
1-----	60	2	0.1	1	0.5	5	0.5
2-----	58	4	.2	2	1.0	10	1.0
3-----	56	7	.5	3	2.0	10	2.0
4-----	54	10	1.0	5	3.0	10	10.0
5-----	51	15	3.0	7	5.0	10	10.0
Sample grade-----	Sample grade shall include wheat of the subclass Hard White, or Soft White, or White Club, or Western White, which does not come within the requirements of any of the grades from No. 1 to No. 5, inclusive; or which contains more than 15.5 percent of moisture, or more than 10 percent of cracked kernels; or which contains inseparable stones and/or cinders; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.						

*† [p. 6]

26.113 Mixed wheat (class VII) defined; grade requirements.

This class shall include all mixtures of wheat not provided for in the classes from I to VI, inclusive.

Grade requirements and designations. Mixed wheat shall be graded according to the numerical and Sample grade requirements of the class of wheat which predominates in the mixture, except that the grade specifications for the factor “wheats of other classes” and the grade specifications for “No. 1 Heavy” in the standards for hard red spring wheat, shall be disregarded.

The grade designation for Mixed wheat shall be stated as provided in either paragraph (a) or (b) of this section:

(a) Except as specified in paragraph (b) of this section, the grade designation for Mixed wheat shall include successively, in the order named, (1) the

*†For statutory and source citations, see note to § 26.101.

number of the grade or the words "Sample grade", as the case may be, (2) the words "Mixed wheat", and (3) the name and approximate percentage of each class of wheat which constitutes more than 10 percent of the mixture in the order of its predominance; but if only one class exceeds 10 percent of the mixture, the name and approximate percentage of that class shall be included in the grade designation, followed by the name and approximate percentage of at least one other class.

(b) **Mixed Durum.** Mixed Durum shall be mixed wheat consisting of 70 percent or more of common durum, and may contain not more than 10 percent of Red Durum and not more than 5 percent of Soft Red Winter and/or White wheat. The grade designation for Mixed Durum shall include successively, in the order named, (1) the number of the grade or the words "Sample grade", as the case may be, and (2) the words "Mixed Durum."

*† [pp. 6-7]

26.114 Dockage. Dockage includes weed seeds, weed stems, chaff, straw, grain other than wheat, sand, dirt, and any other foreign material, which can be removed readily from the wheat by the use of appropriate sieves and cleaning devices; also undeveloped, shriveled, and small pieces of wheat kernels removed in properly separating the foreign material, and which cannot be recovered by properly rescreening or recleaning.

The quantity of dockage shall be calculated in terms of percentage based on the total weight of the grain including the dockage. The percentage of dockage so calculated, when equal to 1 percent or more, shall be stated in terms of whole percent, and when less than 1 percent shall not be stated. A fraction of a percent shall be disregarded. The word "Dockage", together with the percentage thereof, shall be added to the grade designation.*† [p. 7]

26.115 Special grade; Tough wheat. Definition. Tough wheat shall be (a) wheat of any of the classes Hard Red Winter wheat, Soft Red Winter wheat, or White wheat, or of the class Mixed wheat in which wheat of any one of the classes Hard Red Winter wheat, or Soft Red Winter wheat, or White wheat, predominates, which contains more than 14 percent but not more than 15.5 percent of moisture, and (b) wheat of any of the classes Hard Red Spring wheat, or Durum wheat, or Red Durum wheat, or of the class Mixed wheat in which wheat of any one of the classes Hard Red Spring wheat, or Durum wheat, or Red Durum wheat, predominates, which contains more than 14.5 percent but not more than 16 percent of moisture.

Grades. Tough wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not tough, and there shall be added to, and made a part of, the grade designation, the word "Tough."*† [p. 7]

26.116 Special grade; Smutty wheat. Definition. Smutty wheat shall be wheat which has an unmistakable odor of smut, or which contains balls, portions of balls, or spores, or smut, in excess of a quantity equal to 14 balls of average size in 250 grams of wheat.

Smutty wheat shall be graded and designated according to the method described either in paragraph (a) or paragraph (b) of this section.

(a) **Smut dockage.** Before the determination of smut dockage as provided in this paragraph, the wheat shall be graded and designated

*†For statutory and source citations, see note to § 26.101.

according to the grade requirements of the standards applicable to such wheat if it were not smutty. The smut shall be removed by scouring and the loss in weight of the wheat caused by the removal of the smut shall be calculated in terms of percentage based on the total weight of the grain when free from dockage. The percentage so calculated shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be. A fraction of a half percent shall be disregarded. The percentage of the smut dockage, so calculated and stated, shall be added to the grade designation, preceding the statement of dockage, if any.

(b) **“Light Smutty” and “Smutty.”** Smutty wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not smutty; and

(1) In the case of smutty wheat which has an unmistakable odor of smut, or which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 14 balls but not in excess of a quantity equal to 30 balls of average size in 250 grams of wheat, there shall be added to, and made a part of, the grade designation, the words “Light Smutty”; and

(2) In the case of smutty wheat which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 30 balls of average size in 250 grams of wheat, there shall be added to, and made a part of it, the grade designation, the word “Smutty.”* [P. 7 as amended by p. 32 SRA, BAE 144, Apr. 26, 1934]

26.117 Special grade; Garlicky wheat. Definition. Garlicky wheat shall be wheat which contains two or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of wheat.

Grades. Garlicky wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not garlicky; and

(a) In the case of garlicky wheat which contains two or more but not more than six green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of wheat, there shall be added to, and made a part of, the grade designation, the words “Light Garlicky”; and

(b) In the case of garlicky wheat which contains more than six green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of wheat, there shall be added to, and made a part of, the grade designation, the word “Garlicky.”*† [p. 8]

26.118 Special grade; Weevily wheat. Definition. Weevily wheat shall be wheat which is infested with live weevils or other insects injurious to stored grain.

Grades. Weevily wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not weevily, and there shall be added to, and made a part of, the grade designation, the word “Weevily.”*† [p. 8]

26.119 Special grade; Ergoty wheat. Definition. Ergoty wheat shall be wheat which contains ergot in excess of 0.3 percent.

Grades. Ergoty wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not ergoty, and there shall be added to, and made a part of, the grade designation, the word "Ergoty."*† [p. 8]

26.120 Special grade; treated wheat. **Definition.** Treated wheat shall be wheat which has been scoured, limed, washed, sulphured, or treated in such a manner that its true quality is not reflected by either the numerical grade or the Sample grade designation, alone.

Grades. Treated wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not treated, and there shall be added to, and made a part of, the grade designation, a statement indicating the kind of treatment.*† [p. 8]

26.121 Grade factors; definitions—(a) Basis of grade determination. Each determination of dockage, temperature, odor, garlic, and live weevils or other insects injurious to stored grain, shall be upon the basis of the grain as a whole. All other determinations shall be upon the basis of the grain when free from dockage.

(b) Percentages. Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) Percentage of moisture. Percentage of moisture shall be that ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or ascertained by any device and method which give equivalent results in the determination of moisture.

(d) Test weight per bushel. Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) Foreign material. Foreign material shall include all matter other than wheat which is not separated from the wheat in the proper determination of dockage, except that smut balls shall not be considered as foreign material.

(f) Other grains. Other grains shall include rye, oats, corn, grain sorghums, barley, hull-less barley, flaxseed, emmer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, and soybeans.

(g) Damaged kernels. Damaged kernels shall be kernels and pieces of kernels of wheat and other grains which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise materially damaged.

(h) Heat-damaged kernels. Heat-damaged kernels shall be kernels and pieces of kernels of wheat and other grains which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.

*†For statutory and source citations, see note to § 26.101.

(i) **Cracked kernels.** Cracked kernels shall be broken kernels of wheat and other grains remaining after the removal of dockage.*† [pp. 8–9]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES
FOR CORN¹

26.151 Terms defined. For the purposes of the official grain standards of the United States for corn (maize):

Corn. Corn shall be any grain which consists of 50 percent or more of shelled corn of the dent or flint varieties, and may contain not more than 10 percent of other grains for which standards have been established under the provisions of the United States Grain Standards Act. (39 Stat. 482; 7 U.S.C. 71–87)

Classes. Corn shall be divided into three classes, as follows: class I, Yellow corn; class II, White corn; and class III, Mixed corn.*† [p. 9]

26.152 Yellow corn (class I) defined. This class shall include yellow corn, and may include not more than 5 percent of corn of other colors. A slight tinge of red on kernels of corn otherwise yellow shall not affect their classification as Yellow corn.*† [p. 9]

26.153 White corn (class II) defined. This class shall include white corn, and may include not more than 2 percent of corn of other colors. A slight tinge of light straw color or of pink on kernels of corn otherwise white shall not affect their classification as White corn.*† [p. 9]

26.154 Mixed corn (class III) defined; grade requirements. This class shall consist of corn of various colors that does not meet the color requirements for either of the classes Yellow corn or White corn. White-capped yellow kernels shall be classified as Mixed corn.

Grades. Corn shall be graded and designated according to the respective grade requirements of the numerical grades and Sample grade of its appropriate class, and according to the special grades when applicable.*† [p. 10]

¹The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

26.155 Corn; grade requirements.

Corn: Grade requirements for Yellow corn, White corn, and Mixed corn

Grade No.	Mini- mum test weight per bushel	Maximum limits of—			
		Moisture	Cracked corn and foreign material	Damaged kernels (corn and other grains)	
				Total	Heat- damaged
	Pounds	Percent	Percent	Percent	Percent
1-----	54	14. 0	2	3	0. 1
2-----	53	15. 5	3	5	. 2
3-----	51	17. 5	4	7	. 5
4-----	48	20. 0	5	10	1. 0
5-----	44	23. 0	7	15	3. 0
Sample grade-----	Sample grade shall include corn of the class Yellow corn, or White corn, or Mixed corn, which does not come within the requirements of any of the grades from No. 1 to No. 5, inclusive; or which contains stones and/or cinders; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor; or which is otherwise of distinctly low quality.				

*† [p. 10]

26.156 Special grade; Flint corn. Definition. Flint corn shall be corn of any class which consists of more than 25 percent of flint corn.

Grades. Flint corn shall be graded and designated according to the grade requirements of the standards applicable to such corn if it were not flint corn, and the word "Flint" shall be added to, and made a part of, the grade designation, immediately following the word Yellow, or White, or Mixed, as the case may be.*† [p. 10]

26.157 Special grade; Weevily corn. Definition. Weevily corn shall be corn that is infested with live weevils or other insects injurious to stored grain.

Grades. Weevily corn shall be graded and designated according to the grade requirements of the standards applicable to such corn if it were not weevily, and there shall be added to, and made a part of, the grade designation, the word "Weevily."*† [p. 10]

26.158 Grade factors; definitions—(a) Basis of grade determinations. Each determination of class, variety, damage, and heat damage, shall be upon the basis of the grain after the removal of the cracked corn and foreign material. All other determinations shall be upon the basis of the grain as a whole.

*†For statutory and source citations, see note to § 26.101.

(b) **Percentages.** Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) **Percentage of moisture.** Percentage of moisture shall be that ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or ascertained by any device and method which give equivalent results in the determination of moisture.

(d) **Test weight per bushel.** Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) **Cracked corn and foreign material.** Cracked corn and foreign material shall include kernels and pieces of kernels of corn and all matter other than corn which will pass through a No. 12 sieve, and all matter other than corn remaining on such sieve after screening.

(f) **No. 12 sieve.** A metal sieve perforated with round holes $\frac{1}{64}$ inch in diameter.

(g) **Other grains.** Other grains shall include wheat, rye, oats, grain sorghums, barley, hull-less barley, flaxseed, emmer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, sweet corn, pop corn, and soybeans.

(h) **Damaged kernels.** Damaged kernels shall be kernels and pieces of kernels of corn and other grains which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise materially damaged.

(i) **Heat-damaged kernels.** Heat-damaged kernels shall be kernels and pieces of kernels of corn and other grains which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.*† [pp. 10–11]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES FOR BARLEY¹

26.201 Terms defined. For the purposes of the official grain standards of the United States for barley:

Barley. Barley shall be any grain which, before the removal of dockage, consists of 50 percent or more of barley, and may contain not more than 25 percent of other grains for which standards have been established under the provisions of the United States Grain Standards Act (39 Stat. 482; 7 U.S.C. 71–87). The term “barley” in these standards shall not include hull-less barley.

Classes. Barley shall be divided into four classes, as follows: class I, Barley; class II, Black barley; class III, Western barley; and class IV, Mixed barley.

¹ The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

Grades. Barley shall be graded and designated according to the respective grade requirements of the numerical grades and Sample grade of its appropriate class or subclass, and according to the special grades when applicable.*† [p. 11]

26.202 Barley (class I); subclasses defined. This class shall include all white (glumes) barley grown east of the Rocky Mountains and may include not more than 10 percent of barley of other classes. This class shall be divided into two subclasses, as follows:

SUBCLASS (A) MALTING BARLEY

This subclass shall include 6-rowed barley of the class Barley (class I) which meets the requirements of grades Nos. 1 to 3, inclusive, which, after the removal of dockage, contains not more than 5 percent of 2-rowed and/or other types or varieties of barley of unsuitable malting type such as Trebi and Black; which contains not more than 15 percent of barley and other matter that will pass through a 20-gauge metal sieve with slotted perforations 0.076 (4-7/8/64) of an inch wide and $\frac{3}{4}$ of an inch long; which contains not more than 5 percent of skinned and/or broken kernels; which contains not more than 4 percent of damaged barley; and shall not include Bleached barley. Barley of this subclass shall contain 75 percent or more of mellow barley kernels which kernels are not, en masse, semi-steely.

SUBCLASS (B) BARLEY

This subclass shall include all barley of the class Barley which does not meet the requirements of subclass (A) Malting barley.

*† [pp. 11-12]

26.203 Black barley (class II) defined. This class shall include all varieties of black (glumes) barley grown anywhere in the United States, and may include not more than 10 percent of barley of other classes.*† [p. 12]

*†For statutory and source citations, see note to § 26.101.

26.204 Barley and Black barley; grade requirements.

Class I, Barley, and class II, Black barley: Grade requirements for subclass (A) Malting barley and subclass (B) Barley of the class Barley, and for the class Black barley

Grade No.	Minimum limits of—		Maximum limits of—			
	Test weight per bushel	Sound barley ¹	Heat-damaged kernels (barley, other grains, and wild oats)	Foreign material	Broken kernels	Black barley ²
	Pounds	Per-cent	Percent	Per-cent	Per-cent	Per-cent
1 ³ -----	47	95	0. 1	1	4	0. 5
2 ³ -----	46	93	. 2	2	8	1. 0
3 ³ -----	43	90	. 5	3	12	2. 0
4 ⁴ -----	40	80	1. 0	4	20	5. 0
5 -----	35	70	3. 0	6	30	10. 0
Sample grade -----	Sample grade shall include barley of the subclass Barley, or of the class Black barley, which does not come within the grade requirements of any of the grades from No. 1 to No. 5, inclusive; or which contains more than 16 percent of moisture; or which contains inseparable stones and/or cinders; or which is musty, sour, heating, or hot; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.					

¹ Any barley in grade No. 1 that does not come within the provisions of the special grade Blighted, may contain not more than 2 percent of blight-damaged barley; and barley in any grade from No. 2 to Sample grade, inclusive, that does not come within the provisions of the special grade Blighted, may contain not more than 4 percent of blight-damaged barley. Any barley containing more than 4 percent of blight-damaged barley shall be graded No. 1, No. 2, No. 3, No. 4, No. 5, or Sample grade, Blighted, as the case may be, as provided in the specifications for Blighted barley.

² These specifications do not apply to the class Black barley.

³ See special requirements for subclass (A) Malting barley.

⁴ Barley that is badly stained or materially weathered, shall not be graded higher than No. 4.

*† [p. 12]

26.205 Western barley (class III) defined; grade requirements. This class shall include white (glumes) barley grown west of the Great Plains area of the United States, and may include not more than 10 percent of barley of other classes.

Class III, Western barley: Grade requirements for Western barley

Grade No.	Mini- mum limits of sound barley	Maximum limits of—				
		Heat- damaged kernels (barley, other grains, and wild oats)	Wild oats	For- eign mate- rial	Brok- en ker- nels	Black barley
	Per- cent	Percent	Per- cent	Per- cent	Per- cent	Per- cent
1-----	98	0. 1	1	0. 5	3	0. 5
2-----	96	. 2	2	1. 0	6	1. 0
3-----	93	. 3	3	2. 0	10	2. 0
4-----	88	. 5	5	3. 0	15	5. 0
5-----	80	1. 0	10	4. 0	25	10. 0
Sample grade-----	Sample grade shall include barley of the class Western barley which does not come within the grade requirements of any of the grades from No. 1 to No. 5, inclusive, or which contains more than 15 percent of moisture; or which contains inseparable adobe, stones, and cinders, singly or combined; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which contains the seeds of wild brome grasses of a character and in a quantity sufficient to cause the grain to be of low quality for feeding purposes; or which is otherwise of distinctly low quality.					

*† [p. 12]

26.206 Mixed barley (class IV) defined; grade requirements. This class shall be any mixture of barley not provided for in the classes from I to III, inclusive.

Grade requirements and designations. Mixed barley shall be graded according to the grade requirements of either (a) the subclass Barley of the class Barley, or (b) the class Black barley, or (c) the class Western barley, according to which class of barley predominates in the mixture, except that all grade specifications as to the maximum percentages of black barley shall be disregarded.

The grade designation for Mixed barley shall include successively, in the order named, the number of the grade or the words "Sample grade", as the case may be; the words "Mixed barley", followed by

the name and approximate percentage of each class of barley which constitutes 10 percent or more of the mixture in the order of its predominance, but if only one class exceeds 10 percent of the mixture, the name and approximate percentage of that class shall be included in the grade designation, followed by the name and approximate percentage of at least one other class. For Mixed barley, in which barley of the class Western barley predominates, the grade designation shall include a statement of the test weight per bushel immediately following the names and percentages of the classes composing the mixture.*† [p. 13]

26.207 Dockage. Dockage in barley shall be determined according to the method described in paragraph (a), or paragraph (b), or paragraph (c) of this section.

(a) In the case of Barley (class I), and Black barley (class II), dockage includes all matter which can be removed from the barley by the use of a metal sieve perforated with equilateral triangular perforations the inscribed circles of which are $\frac{5}{64}$ inch in diameter.

(b) In the case of Western barley (class III), dockage includes weed seeds, weed stems, chaff, straw, grain other than barley, sand, dirt, and any material other than barley, which can be removed readily from the barley by the use of appropriate sieves and cleaning devices; also undeveloped, shriveled, and small pieces of barley kernels removed in properly separating the foreign material and which cannot be recovered by properly rescreening or recleaning.

(c) In the case of Mixed barley (class IV), the dockage determination shall be made in accordance with the specifications given in paragraph (a) when barley, either of the class Barley (class I) or barley of the class Black barley (class II) predominates in the mixture, or in accordance with the specifications given in paragraph (b) when barley of the class Western barley (class III) predominates in the mixture.

The quantity of dockage shall be calculated in terms of percentage based on the total weight of the grain including the dockage. The percentage of dockage, so calculated, when equal to 1 percent or more, shall be stated in terms of whole percent, and when less than 1 percent shall not be stated. A fraction of a percent shall be disregarded. The word "Dockage", together with the percentage thereof, shall be added to the grade designation.*† [p. 13]

26.208 Special grade; Western barley. Grades for test weight of Western barley. For barley of the class Western barley, the test weight per bushel in terms of whole pounds shall be added to, and made a part of, the grade designation, following the name of the class. A fraction of a pound shall be disregarded.*† [p. 13.]

26.209 Special grade; Two-rowed barley. Definition. Two-rowed barley shall consist of two-rowed barley of the subclass Barley of the class Barley, or of the class Western barley, and may contain not more than 10 percent of barley of other varieties.

Grades. Two-rowed barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not two-rowed, and there shall be added to, and

made a part of, the grade designation, preceding the name of the class, the word "Two-rowed."*† [p. 13]

26.210 Special grade; Tough barley. Definition. Tough barley shall be (a) barley of either of the classes Barley or Black barley, or of the class Mixed barley in which barley of either one of the classes Barley or Black barley predominates, which contains more than 14.5 percent but not more than 16 percent of moisture, and (b) barley of the class Western barley, or of the class Mixed barley in which barley of the class Western barley predominates, which contains more than 13.5 percent but not more than 15 percent of moisture.

Grades. Tough barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not tough, and there shall be added to, and made a part of, the grade designation, the word "Tough."*† [p. 14]

26.211 Special grade; Bright Western barley. Definition. Bright Western barley shall be barley of the class Western barley, except Bleached barley, that is of good natural color.

Grades. Bright western barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not bright, and there shall be added to, and made a part of, the grade designation, preceding the name of the class, the word "Bright."*† [p. 14]

26.212 Special grade; Stained Western barley. Definition. Stained Western barley shall be barley of the class Western barley, except Bleached barley, that is badly stained, or weathered.

Grades. Stained western barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not stained, and there shall be added to, and made a part of, the grade designation, the word "Stained."*† [p. 14]

26.213 Special grade; Blighted barley. Definition. Blighted barley shall be all barley which contains more than 4 percent of barley damaged or materially discolored by blight and/or mold.

Grades. Blighted barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not blighted, and there shall be added to, and made a part of, the grade designation, the word "Blighted."*† [p. 14]

26.214 Special grade; Smutty barley. Definition. Smutty barley shall be barley which has the kernels covered with smut spores, or which contains smut masses in excess of 0.2 percent.

Grades. Smutty barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not smutty, and there shall be added to, and made a part of, the grade designation, the word "Smutty."*† [p. 14]

26.215 Special grade; Garlicky barley. Definition. Garlicky barley shall be barley which contains three or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 500 grams of barley.

Grades. Garlicky barley shall be graded and designated according to the grade requirements of the standards applicable to such

*†For statutory and source citations, see note to § 26.101.

barley if it were not garlicky, and there shall be added to, and made a part of, the grade designation, the word "Garlicky."*† [p. 14]

26.216 Special grade; Weevily barley. Definition. Weevily barley shall be barley which is infested with live weevils or other insects injurious to stored grain.

Grades. Weevily barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not weevily, and there shall be added to, and made a part of, the grade designation, the word "Weevily."*† [p. 14]

26.217 Special grade; Ergoty barley. Definition. Ergoty barley shall be barley which contains ergot in excess of 0.3 percent.

Grades. Ergoty barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not ergoty, and there shall be added to, and made a part of, the grade designation, the word "Ergoty."*† [p. 15]

26.218 Special grade; Bleached barley. Definition. Bleached barley shall be barley which, in whole or in part, has been treated by the use of sulphurous acid or any other bleaching agent.

Grades. Bleached barley shall be graded and designated according to the grade requirements of the standards applicable to such barley if it were not bleached, and there shall be added to, and made a part of it, the grade designation, the word "Bleached."*† [p. 15]

26.219 Grade factors; definitions—(a) Basis of grade determinations. Each determination of dockage, temperature, odor, garlic, and live weevils or other insects injurious to stored grain, shall be upon the basis of the grain as a whole. All other determinations shall be upon the basis of the grain when free from dockage.

(b) Percentages. Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) Percentage of moisture. Percentage of moisture shall be ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or ascertained by any device and method which give equivalent results in the determination of moisture.

(d) Test weight per bushel. Test weight per bushel shall be the weight per Winchester bushel, as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) Foreign material. Foreign material shall include all matter other than barley, except other grains, wild oats, and smut masses, which is not separated from the barley in the proper determination of dockage.

(f) Other grains. Other grains shall include wheat, rye, oats, corn, grain sorghums, sorghums, hull-less barley, flaxseed, emmer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, and soybeans.

(g) Sound barley. Sound barley shall be kernels and pieces of kernels of barley remaining after the removal of dockage, which

are not damaged or materially discolored by blight and/or mold, which are not heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise materially damaged.

(h) **Heat-damaged kernels.** Heat-damaged kernels shall be kernels and pieces of kernels of barley, other grains, and wild oats, which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.*† [p. 5]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES
FOR OATS¹

26.251 Terms defined. For the purposes of the official grain standards of the United States for oats:

Oats. Oats shall be any grain which consists of 80 percent or more of cultivated oats. Oats may contain not more than 10 percent of wild oats.

Classes. Oats shall be divided into five classes as follows: class I, White oats; class II, Red oats; class III, Gray oats; class IV, Black oats; and class V, Mixed oats. For the purpose of this classification, the characteristics of each class, except Mixed oats, shall be based on color characteristics; White oats shall include yellow oats; and tinges of white, brown, or black, on the kernels of any red oats variety shall not affect their classification as red oats. Oats of any class except Mixed oats may include not more than 10 percent of cultivated oats of other classes. Mixed oats shall be any mixture of oats which does not meet the requirements for any one of the classes White oats, Red oats, Gray oats, or Black oats.

Grades. Oats shall be graded and designated according to the respective grade requirements of the numerical grades and Sample grade of their appropriate class, and according to the special grades when applicable.*† [p. 16]

¹ The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

26.252 Oats; grade requirements.

Oats: Grade requirements for the classes White oats, Red oats, Gray oats, Black oats, and Mixed oats

Grade No.	Minimum limits of—		Maximum limits of—		
	Test weight per bushel	Sound cultivated oats	Heat-damaged kernels (oats, other grains, and wild oats)	Foreign material	Wild oats
	Pounds	Percent	Percent	Percent	Percent
1 ¹ -----	32	97	0. 1	2	2
2 ² -----	30	94	. 3	2	3
3 ³ -----	27	90	1. 0	3	5
4 ⁴ -----	24	80	3. 0	5	10
Sample grade-----	Sample grade shall include oats of any one of the classes, White oats, Red oats, Gray oats, Black oats, or Mixed oats, which do not come within the requirements of any of the grades from No. 1 to No. 4, inclusive; or which contain more than 16 percent of moisture; or which contain stones and/or cinders; or which are musty, or sour, or heating, or hot; or which have any commercially objectionable foreign odor except of smut or garlic, or which contain seeds of wild brome grasses of a character and in a quantity sufficient to cause the grain to be of low quality for feeding purposes; or which are otherwise of distinctly low quality.				

¹ The oats in grade No. 1 White oats may contain not more than 5 percent of oats of other classes, of which not more than 3 percent may be black cultivated oats.

² The oats in grade No. 2 White oats may contain not more than 5 percent of black cultivated oats.

³ Oats that are slightly weathered shall not be graded higher than No. 3.

⁴ Oats that are badly stained or materially weathered shall not be graded higher than No. 4.

*† [p. 16]

26.253 Special grade; Tough oats. Definition. Tough oats shall be oats which contain more than 14.5 percent but not more than 16 percent of moisture.

Grades. Tough oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not tough, and there shall be added to, and made a part of, the grade designation, the word "Tough."*† [p. 16]

26.254 Special grade; Heavy oats. Definition. Heavy oats shall be oats which have a test weight per bushel of 35 pounds or more but less than 38 pounds.

Grades. Heavy oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if

they were not "heavy", and there shall be added to, and made a part of, the grade designation, preceding the name of the class, the word "Heavy."*† [p. 16]

26.255 Special grade; Extra Heavy oats. Definition. Extra Heavy oats shall be oats which have a test weight per bushel of 38 pounds or more.

Grades. Extra heavy oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not "extra heavy", and there shall be added to, and made a part of, the grade designation, preceding the name of the class, the words "Extra Heavy."*† [p. 17]

26.256 Special grade; Bright oats. Definition. Bright oats shall be oats, except Bleached oats, that are of good natural color.

Grades. Bright oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not bright, and there shall be added to, and made a part of, the grade designation, preceding the name of the class, the word "Bright."*† [p. 17]

26.257 Special grade; Cereal oats. Definition. Cereal oats shall be any oats, whether sized, clipped, or natural, which contain more than 20 percent of oats and/or other matter that will pass through a 20-gage metal sieve with slotted perforations 0.064 inch wide by $\frac{3}{8}$ inch long.

Grades. Cereal oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not "cereal" oats, and there shall be added to, and made a part of, the grade designation, the word "Cereal."*† [p. 17]

26.258 Special grade; Bleached oats. Definition. Bleached oats shall be oats which, in whole or in part, have been treated by the use of sulphurous acid or any other bleaching agent.

Grades. Bleached oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not bleached, and there shall be added to, and made a part of, the grade designation, the word "Bleached."*† [p. 17]

26.259 Special grade; Weevily oats. Definition. Weevily oats shall be oats which are infested with live weevils or other insects injurious to stored grain.

Grades. Weevily oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not weevily, and there shall be added to, and made a part of, the grade designation, the word "Weevily."*† [p. 17]

26.260 Special grade; Smutty oats. Definition. Smutty oats shall be oats which contain balls, portions of balls, or spores, of smut, in excess of a quantity equal to 30 balls of average size in 250 grams of oats.

Grades. Smutty oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not smutty, and there shall be added to, and made a part of, the grade designation, the word "Smutty."*† [p. 17]

*†For statutory and source citations, see note to § 26.101.

26.261 Special grade; Ergoty oats. Definition. Ergoty oats shall be oats which contain ergot in excess of 0.3 percent.

Grades. Ergoty oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not ergoty, and there shall be added to, and made a part of, the grade designation, the word "Ergoty." *† [p. 17]

26.262 Special grade; Garlicky oats. Definition. Garlicky oats shall be oats which contain four or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 500 grams of oats.

Grades. Garlicky oats shall be graded and designated according to the grade requirements of the standards applicable to such oats if they were not garlicky, and there shall be added to, and made a part of, the grade designation, the word "Garlicky." *† [p. 17-18]

26.263 Grade factors; definitions—(a) Basis of grade determinations. All determinations shall be upon the basis of the lot of grain as a whole.

(b) **Percentages.** Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) **Percentage of moisture.** Percentage of moisture shall be that ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or ascertained by any device and method which give equivalent results in the determination of moisture.

(d) **Test weight per bushel.** Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) **Foreign material.** Foreign material shall include all matter except kernels and pieces of kernels of cultivated oats, other grains, and wild oats; but shall include oats clippings and detached hulls.

(f) **Other grains.** Other grains shall include wheat, rye, corn, grain sorghums, barley, hull-less barley, flaxseed, emmer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, and soybeans.

(g) **Sound cultivated oats.** Sound cultivated oats shall be all kernels and pieces of kernels of cultivated oats which are not heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise materially damaged.

(h) **Heat-damaged kernels.** Heat-damaged kernels shall be kernels and pieces of kernels of cultivated oats, other grains, and wild oats, which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.*† [p. 18]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES
FOR FEED OATS¹

26.301 Terms defined. For the purposes of the official grain standards of the United States for Feed oats:

Feed oats. Feed oats shall be any grain which consists of either (a) 30 percent or more but less than 80 percent of cultivated oats, but not less than 65 percent of cultivated and wild oats combined, or (b) 80 percent or more of cultivated oats and more than 10 percent of wild oats. Feed oats may contain not more than 25 percent of other grains, and may contain not more than 10 percent of foreign material, which 10 percent may include not more than 5 percent of fine seeds.

Grades. Feed oats shall be graded and designated according to the respective grade requirements of the numerical grades and Sample grade of these standards, and according to the special grades when applicable.*† [p. 18]

26.302 Feed oats; grade requirements.

Grade No.	Minimum limits of—		Maximum limits of—		
	Test weight per bushel	Cultivated oats	Heat-damaged kernels (oats, wild oats, and other grains)	Foreign material	
				Total	Fine seeds
	Pounds	Percent	Percent	Percent	Percent
1-----	32	60	2	3	2
2-----	29	45	4	4	3
3 ^a -----	26	30	6	6	4
Sample grade-----	Sample grade shall include feed oats which do not come within the requirements of any of the grades from No. 1 to No. 3, inclusive; or which contain more than 16 percent of moisture; or which are musty or sour, or heating, or hot; or which have any commercially objectionable foreign odor except of smut or garlic; or which contain seeds of wild brome grasses of a character and in a quantity sufficient to cause the grain to be of low quality for feeding purposes; or which are otherwise of distinctly low quality.				

^a Feed oats that are badly stained or materially weathered, shall not be graded higher than No. 3.

*† [p. 19]

26.303 Special grade; Tough Feed oats. Definition. Tough Feed oats shall be feed oats which contain more than 14.5 percent but not more than 16 percent of moisture.

¹ The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

Grades. Tough feed oats shall be graded and designated according to the grade requirements of the standards applicable to such feed oats if they were not tough, and there shall be added to, and made a part of, the grade designation, the word "Tough."*† [p. 19]

26.304 Special grade; Bleached Feed oats. Definition. Bleached Feed oats shall be feed oats which, in whole or in part, have been treated by the use of sulphurous acid or any other bleaching agent.

Grades. Bleached feed oats shall be graded and designated according to the grade requirements of the standards applicable to such feed oats if they were not bleached, and there shall be added to, and made a part of, the grade designation, the word "Bleached."*† [p. 19]

26.305 Special grade; Weevily Feed oats. Definition. Weevily Feed oats shall be feed oats which are infested with live weevils or other insects injurious to stored grain.

Grades. Weevily feed oats shall be graded and designated according to the grade requirements of the standards applicable to such feed oats if they were not weevily, and there shall be added to, and made a part of, the grade designation, the word "Weevily."*† [p. 19]

26.306 Special grade; Smutty Feed oats. Definition. Smutty Feed oats shall be feed oats which contain balls, portions of balls, or spores, of smut, in excess of a quantity equal to 30 balls of average size in 250 grams of feed oats.

Grades. Smutty feed oats shall be graded and designated according to the grade requirements of the standards applicable to such feed oats if they were not smutty, and there shall be added to, and made a part of, the grade designation, the word "Smutty."*† [p. 19]

26.307 Special grade; Ergoty Feed oats. Definition. Ergoty Feed oats shall be feed oats which contain ergot in excess of 0.3 per cent.

Grades. Ergoty feed oats shall be graded and designated according to the grade requirements of the standards applicable to such feed oats if they were not ergoty, and there shall be added to, and made a part of, the grade designation, the word "Ergoty."*† [p. 19]

26.308 Grade factors; definitions—(a) Basis of grade determinations. All determinations shall be upon the basis of the lot of grain as a whole.

(b) Percentages. Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) Percentage of moisture. Percentage of moisture shall be that ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or ascertained by any device and method which give equivalent results in the determination of moisture.

(d) Test weight per bushel. Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture.

ture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) Foreign material. Foreign material shall include all matter except kernels and pieces of kernels of cultivated oats, other grains, and wild oats; but shall include oats clippings and detached hulls.

(f) Fine seeds. Fine seeds shall include all matter which can be removed from feed oats by the use of a metal sieve perforated with equilateral triangular perforations the inscribed circles of which are $\frac{5}{64}$ inch in diameter.

(g) Other grains. Other grains shall include wheat, rye, corn, grain sorghums, barley, hull-less barley, flaxseed, emmer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, and soybeans.

(h) Heat-damaged kernels. Heat-damaged kernels shall be kernels and pieces of kernels of cultivated oats, wild oats, and other grains, which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.*† [pp. 19–20]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES FOR MIXED FEED OATS¹

26.351 Terms defined. For the purposes of the official grain standards of the United States for Mixed Feed oats:

Mixed Feed oats. Mixed Feed oats shall be any grain which consists of less than 30 percent of cultivated oats, but either (a) not less than 65 percent of cultivated and wild oats combined, or (b) not less than 65 percent of wild oats; may contain not more than 25 percent of other grains; and may contain not more than 10 percent of foreign material, which 10 percent may include not more than 5 percent of fine seeds.

Grades. Mixed feed oats shall be graded and designated according to the respective grade requirements of the numerical grades and Sample grade of these standards, and according to the special grades when applicable.*† [p. 20]

¹The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

26.352 Mixed Feed oats; grade requirements.

Grade No.	Mini- mum test weight per bushel	Maximum limits of—		
		Heat-dam- aged kernels (oats, wild oats, and other grains)	Foreign material	
			Total	Fine seeds
	Pounds	Percent	Percent	Percent
1-----	32	2	5	2
2-----	29	4	7	3
3 ¹ -----	26	6	10	4
Sample grade-----	Sample grade shall include mixed feed oats which do not come within the requirements of any of the grades from No. 1 to No. 3, inclusive; or which contain more than 16 percent of moisture; or which are musty, or sour, or heating, or hot; or which have any commercially objectionable foreign odor except smut or garlic; or which contain seeds of wild brome grasses of a character and in a quantity sufficient to cause the grain to be of low quality for feeding purposes; or which are otherwise of distinctly low quality.			

¹ Mixed feed oats that are badly stained or materially weathered, shall not be graded higher than No. 3.

*† [p. 21]

26.353 Special grade; Tough Mixed Feed oats. Definition. Tough Mixed Feed oats shall be mixed feed oats which contain more than 14.5 percent but not more than 16 percent of moisture.

Grades. Tough mixed feed oats shall be graded and designated according to the grade requirements of the standards applicable to such mixed feed oats if they were not tough, and there shall be added to, and made a part of, the grade designation, the word “Tough.”*† [p. 21]

26.354 Special grade; Bleached Mixed Feed oats. Definition. Bleached Mixed Feed oats shall be mixed feed oats which, in whole or in part, have been treated by the use of sulphurous acid or any other bleaching agent.

Grades. Bleached mixed feed oats shall be graded and designated according to the grade requirements of the standards applicable to such mixed feed oats if they were not bleached, and there shall be added to, and made a part of, the grade designation, the word “Bleached.”*† [p. 21]

26.355 Special grade; Weevily Mixed Feed oats. Definition. Weevily Mixed Feed oats shall be mixed feed oats which are infested with live weevils or other insects injurious to stored grain.

Grades. Weevily mixed feed oats shall be graded and designated according to the grade requirements of the standards applicable

to such mixed feed oats if they were not weevily, and there shall be added to, and made a part of, the grade designation, the word "Weevily."*† [p. 21]

26.356 Special grade; Smutty Mixed Feed oats. Definition. Smutty Mixed Feed oats shall be mixed feed oats which contain balls, portions of balls, or spores, of smut, in excess of a quantity equal to 30 balls of average size in 250 grams of mixed feed oats.

Grades. Smutty mixed feed oats shall be graded and designated according to the grade requirements of the standards applicable to such mixed feed oats if they were not smutty, and there shall be added to, and made a part of, the grade designation, the word "Smutty."*† [p. 21]

26.357 Special grade; Ergoty Mixed Feed oats. Definition. Ergoty Mixed Feed oats shall be mixed feed oats which contain ergot in excess of 0.3 percent.

Grades. Ergoty mixed feed oats shall be graded and designated according to the grade requirements of the standards applicable to such mixed feed oats if they were not ergoty, and there shall be added to, and made a part of, the grade designation, the word "Ergoty."*† [pp. 21–22]

26.358 Grade factors; definitions—(a) Basis of grade determinations. All determinations shall be upon the basis of the lot of grain as a whole.

(b) Percentages. Percentages, except in the case of moisture shall be percentages ascertained by weight.

(c) Percentage of moisture. Percentage of moisture shall be that ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or ascertained by any device and method which give equivalent results in the determination of moisture.

(d) Test weight per bushel. Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) Foreign material. Foreign material shall include all matter except kernels and pieces of kernels of cultivated oats, other grains, and wild oats; and shall include oats clippings and detached hulls.

(f) Fine seeds. Fine seeds shall include all matter which can be removed from Mixed Feed oats by the use of a metal sieve perforated with equilateral triangular perforations the inscribed circles of which are $\frac{5}{64}$ inch in diameter.

(g) Other grains. Other grains shall include wheat, rye, corn, grain sorghums, barley, hull-less barley, flaxseed, emmer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, and soybeans.

(h) Heat-damaged kernels. Heat-damaged kernels shall be kernels and pieces of kernels of cultivated oats, wild oats, or other

*†For statutory and source citations, see note to § 26.101.

grains, which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.*† [p. 22]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES
FOR RYE¹

26.401 Terms defined. For the purposes of the official grain standards of the United States for rye:

Rye. Rye shall be any grain which, before the removal of dockage, consists of 50 percent or more of rye and not more than 10 percent of other grains for which standards have been established under the provisions of the United States Grain Standards Act (39 Stat. 482; 7 U.S.C. 71–87).

Grades. Rye shall be graded and designated according to the respective grade requirements of the numerical grades and sample grade of these standards, and according to the special grades when applicable.*† [p. 22]

26.402 Rye; grade requirements.

Grade No.	Mini- mum test weight per bushel	Maximum limits of—			
		Damaged kernels (rye and other grains)		Foreign material	
		Total	Heat- dam- aged	Total	Foreign matter other than wheat
	Pounds	Percent	Percent	Percent	Percent
1-----	56	2	0. 1	3	1
2-----	54	4	. 2	6	2
3-----	52	7	. 5	10	4
4-----	49	15	3. 0	10	6
Sample grade-----	Sample grade shall include rye which does not come within the requirements of any of the grades from No. 1 to No. 4, inclusive; or which contains more than 16 percent of moisture; or which contains inseparable stones and/or cinders; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.				

*† [p. 23]

¹ The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

*†For statutory and source citations, see note to § 26.101.

26.403 Dockage. Dockage includes weed seeds, weed stems, chaff, straw, grain other than rye, sand, dirt, and any other foreign material, which can be removed readily from the rye by the use of appropriate sieves and cleaning devices; also undeveloped, shriveled, and small pieces of rye kernels which are removed in properly separating the foreign material, and which cannot be recovered by properly rescreening or recleaning.

The quantity of dockage shall be calculated in terms of percentage based on the total weight of the grain including the dockage. The percentage of dockage so calculated, when equal to 1 percent or more, shall be stated in terms of whole percent, and when less than 1 percent shall not be stated. A fraction of a percent shall be disregarded. The word "Dockage", together with the percentage thereof, shall be added to the grade designation.*† [p. 23]

26.404 Special grade; Tough rye. Definition. Tough rye shall be rye which contains more than 14 percent, but not more than 16 percent, of moisture.

Grades. Tough rye shall be added and designated according to the grade requirements of the standards applicable to such rye if it were not tough, and there shall be added to, and made a part of, the grade designation, the word "Tough".*† [p. 23]

26.405 Special grade; Smutty rye. Definition. Smutty rye shall be rye which has an unmistakable odor of smut, or which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 14 balls of average size in 250 grams of rye.

Grades. Smutty rye shall be graded and designated according to the grade requirements of the standards applicable to such rye if it were not smutty; and

(a) In the case of smutty rye which has an unmistakable odor of smut, or which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 14 balls but not in excess of a quantity equal to 30 balls of average size in 250 grams of rye, there shall be added to, and made a part of, the grade designation, the words "Light Smutty"; and

(b) In the case of smutty rye which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 30 balls of average size in 250 grams of rye, there shall be added to, and made a part of, the grade designation, the word "Smutty."* [P. 23 as amended by p. 33 SRA, BAE 144, Apr. 26, 1934]

26.406 Special grade; Garlicky rye. Definition. Garlicky rye shall be rye which contains two or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of rye.

Grades. Garlicky rye shall be graded and designated according to the grade requirements of the standards applicable to such rye if it were not garlicky; and

(a) In the case of garlicky rye which contains two or more but not more than six green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of rye, there shall be added

*†For statutory and source citations, see note to § 26.101.

to, and made a part of, the grade designation, the words "Light Garlicky"; and

(b) In the case of garlicky rye which contains more than six green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of rye, there shall be added to, and made a part of, the grade designation, the word "Garlicky".*† [p. 24]

26.407 Special grade; Weevily rye. Definition. Weevily rye shall be rye which is infested with live weevils or other insects injurious to stored grain.

Grades. Weevily rye shall be graded and designated according to the grade requirements of the standards applicable to such rye if it were not weevily, and there shall be added to, and made a part of, the grade designation, the word "Weevily".*† [p. 24]

26.408 Special grade; Ergoty rye. Definition. Ergoty rye shall be rye which contains ergot in excess of 0.3 percent.

Grades. Ergoty rye shall be graded and designated according to the grade requirements of the standards applicable to such rye if it were not ergoty, and there shall be added to, and made a part of, the grade designation, the word "Ergoty".*† [p. 24]

26.409 Grade factors; definitions—(a) Basis of grade determinations. Each determination of dockage, temperature, odor, garlic, and live weevils or other insects injurious to stored grain, shall be upon the basis of the grain as a whole. All other determinations shall be upon the basis of the grain when free from dockage.

(b) Percentages. Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) Percentage of moisture. Percentage of moisture shall be that ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or ascertained by any device and method which give equivalent results in the determination of moisture.

(d) Test weight per bushel. Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) Foreign material. Foreign material shall include all matter other than rye, which is not separated from the rye in the proper determination of dockage, except that smut balls shall not be considered as foreign material.

(f) Other grains. Other grains shall include wheat, oats, corn, grain sorghums, barley, hull-less barley, flaxseed, emmer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, and soybeans.

(g) Damaged kernels. Damaged kernels shall be kernels and pieces of kernels of rye and other grains which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise materially damaged.

(h) Heat-damaged kernels. Heat-damaged kernels shall be kernels and pieces of kernels of rye and other grains which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.*† [p. 24]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES
FOR MIXED GRAIN¹

26.451 Terms defined. For the purposes of the official grain standards of the United States for Mixed grain:

Definition. Mixed grain shall be any mixture of those grains for which standards have been or hereafter may be established under the provisions of the United States Grain Standards Act (39 Stat. 482; 7 U.S.C. 71–87), that does not come within the requirements of any of the standards for such grains, and that does not contain more than 50 percent of foreign material. Wild oats in Mixed grain shall be classed as a grain.

Grades. Mixed grain shall be graded and designated either as “Mixed grain” or as “Sample grade Mixed grain”, and according to the special grades when applicable.*† [p. 29]

26.452 Mixed grain; grade requirements. Mixed grain (grade). The grade “Mixed grain” shall include all mixed grain which does not come within the specifications for Sample grade Mixed grain.

Sample grade Mixed grain. The grade “Sample grade Mixed grain” shall include all mixed grain which contains more than 16 percent of moisture, or more than 15 percent of damaged kernels, or more than 3 percent of heat-damaged kernels; or which is musty, or sour, or heating, or hot; or which contains stones and/or cinders; or which has any commercially objectionable foreign odor except of smut or garlic; or which has a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.*† [pp. 29–30]

26.453 Mixed grain; grade designations. The grade designation for Mixed grain shall include, in the order named:

(a) The words “Mixed grain”, or other words “Sample grade Mixed grain”, as the case may be;

(b) The name and percentage of each kind of grain, including wild oats, which constitutes 10 percent or more of the mixture, in the order of predominance; and

(c) When applicable, the words “Other grains”, followed by a statement of the percentage of the combined quantity of those kinds of grain, including wild oats, each of which is present in a quantity less than 10 percent; and

(d) The words “Foreign material”, together with a statement of the percentage thereof.

All percentage statements shall be in terms of whole percent. A fraction of a percent shall be disregarded.*† [p. 30]

¹ The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

*† For statutory and source citations, see note to § 26.101.

26.454 Special grade; Tough Mixed grain. Definition. Tough Mixed grain shall be mixed grain which contains more than 14.5 percent but not more than 16 percent of moisture.

Grades. Tough mixed grain shall be graded and designated according to the grade requirements of the standards applicable to such mixed grain if it were not tough, and there shall be added to, and made a part of, the grade designation, the word "Tough".*† [p. 30]

26.455 Special grade; Smutty Mixed grain. Definition. Smutty Mixed grain shall be (a) mixed grain in which wheat or rye predominates, and which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 14 balls of average size in 250 grams of mixed grain, (b) mixed grain in which oats predominate, and which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 30 balls of average size in 250 grams of mixed grain, or (c) any mixed grain which has the kernels covered with smut spores, or which contains smut masses in excess of 0.2 percent.

Grades. Smutty mixed grain shall be graded and designated according to the grade requirements of the standards applicable to such mixed grain if it were not smutty, and there shall be added to, and made a part of, the grade designation, the word "Smutty."* [P. 30 as amended by p. 33 SRA, BAE 144, Apr. 26, 1934]

26.456 Special grade; Ergoty Mixed grain. Definition. Ergoty Mixed grain shall be mixed grain which contains ergot in excess of 0.3 percent.

Grades. Ergoty mixed grain shall be graded and designated according to the grade requirements of the standards applicable to such mixed grain if it were not ergoty, and there shall be added to, and made a part of, the grade designation, the word "Ergoty."*† [p. 30]

26.457 Special grade; Garlicky Mixed grain. Definition. Garlicky Mixed grain shall be (a) mixed grain in which wheat or rye predominates, and which contains two or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of mixed grain; or (b) mixed grain in which oats or barley predominates, and which contains four or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 500 grams of mixed grain.

Grades. Garlicky mixed grain shall be graded and designated according to the grade requirements of the standards applicable to such mixed grain if it were not garlicky, and there shall be added to, and made a part of, the grade designation, the word "Garlicky."*† [p. 30]

26.458 Special grade; Weevily Mixed grain. Definition. Weevily Mixed grain shall be mixed grain which is infested with live weevils or other insects injurious to stored grain.

Grades. Weevily mixed grain shall be graded and designated according to the grade requirements of the standards applicable to such mixed grain if it were not weevily, and there shall be added to, and made a part of, the grade designation, the word "Weevily."*† [p. 31]

26.459 Special grade; Blighted Mixed grain. Definition. Blighted Mixed grain shall be all mixed grain in which barley predominates, and which, as a whole, contains more than 4 percent of barley damaged or materially discolored by blight and/or mold.

Grades. Blighted mixed grain shall be graded and designated according to the grade requirements of the standards applicable to such mixed grain if it were not blighted, and there shall be added to, and made a part of, the grade designation, the word "Blighted." *† [p. 31]

26.460 Special grade; treated mixed grain. Definition. Treated mixed grain shall be mixed grain which has been scoured, limed, washed, sulphured, or treated in such a manner that its true quality is not reflected by either the numerical grade or the Sample grade designation, alone.

Grades. Treated mixed grain shall be graded and designated according to the grade requirements of the standards applicable to such mixed grain if it were not treated, and there shall be added to, and made a part of, the grade designation, a statement indicating the kind of treatment.*† [p. 31]

26.461 Grade factors; definitions—(a) Basis of grade determinations. All determinations shall be on the basis of the grain as a whole.

(b) **Percentages.** Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) **Percentage of moisture.** Percentage of moisture shall be that ascertained by the moisture tester and method of use thereof described in Bulletin No. 1375, issued by the United States Department of Agriculture, or that ascertained by any device and method which give equivalent results in the determination of moisture. In the determination of moisture by the method described in Department Bulletin No. 1375, the heating element shall be cut off when the thermometer shows a temperature specified for the grain which predominates in the mixture.

(d) **Test weight per bushel.** Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) **Foreign material.** Foreign material shall include all matter other than grains for which standards have been established under the provisions of the United States Grain Standards Act, but shall not include wild oats.

(f) **Damaged kernels.** Damaged kernels shall be all kernels and pieces of kernels of those grains for which standards have been established under the provisions of the United States Grain Standards Act, which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise materially damaged.

(g) **Heat-damaged kernels.** Heat-damaged kernels shall be kernels and pieces of kernel of those grains for which standards have been established under the provisions of the United States Grain

*†For statutory and source citations, see note to § 26.101.

Standards Act, which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.*† [p. 31]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES
FOR FLAXSEED¹

26.501 Terms defined. For the purposes of the official grain standards of the United States for flaxseed:

Flaxseed. Flaxseed shall be any grain which, before the removal of dockage, consists of 50 percent or more of flaxseed and not more than 20 percent of other grains for which standards have been established under the provisions of the United States Grain Standards Act (39 Stat. 482; 7 U.S.C. 71–87).

Grades. Flaxseed shall be graded and designated according to the respective grade requirements of the numerical grades and Sample grade of these standards.*† [p. 28]

26.502 Flaxseed; grade requirements.

Grade No.	Minimum test weight per bushel	Maximum limits of damaged flaxseed
1-----	49 pounds-----	20 percent.
2-----	47 pounds-----	30 percent.
Sample grade-----	Sample grade shall include flaxseed which does not come within the requirements of either of the grades No. 1 or No. 2; or which contains fire-damaged flaxseed; or which contains more than 11 percent of moisture; or which is musty, or sour, or heating, or hot; or which has any commercially objectionable foreign odor; or which is otherwise of distinctly low quality.	

*† [p. 28]

26.503 Dockage. Dockage shall include all matter other than flaxseed which is contained in the lot of grain as a whole; also undeveloped, shriveled, and small pieces of flaxseed removed with the dockage and which cannot be recovered by properly rescreening or recleaning.

The quantity of dockage shall be calculated in terms of percentage based on the total weight of the flaxseed including the dockage. The percentage of dockage so calculated, when equal to one-half percent or more, shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be. A fraction of a half percent shall be disregarded. The word “Dockage”, together with the percentage thereof, shall be added to the grade designation.*† [pp. 28–29]

26.504 Grade factors; definitions—(a) Basis of grade determinations. Each determination of test weight, moisture, damage,

¹The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

and “fire damaged”, shall be upon the basis of the grain after the removal of that part of the dockage which can be removed readily by the use of appropriate sieves and cleaning devices. All other determinations shall be upon the basis of the grain as a whole.

(b) Percentages. Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) Percentage of moisture. Percentage of moisture shall be that ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or ascertained by any device and method which give equivalent results in the determination of moisture.

(d) Test weight per bushel. Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) Damaged flaxseed. Damaged flaxseed shall be seeds and pieces of seeds of flaxseed which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise materially damaged.*† [p. 29]

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES FOR GRAIN SORGHUMS¹

26.551 Terms defined. For the purposes of the official grain standards of the United States for grain sorghums:

Grain sorghums. Grain sorghums shall be any grain which, before the removal of dockage, consists of 50 percent or more of grain sorghums and not more than 10 percent of other grains for which standards have been established under the provisions of the United States Grain Standards Act (39 Stat. 482; 7 U.S.C. 71–87), and which, after the removal of dockage and of “cracked kernels, foreign material, and other grains”, contains not more than 25 percent of nongrain sorghums.

Classes. Grain sorghums shall be divided into five classes as follows: class I, White grain sorghums; class II, Yellow grain sorghums; class III, Red grain sorghums; class IV, Brown grain sorghums; and class V, Mixed grain sorghums.

Grades. Grain sorghums shall be graded and designated according to the respective grade requirements of the numerical grades and Sample grade of their appropriate class or subclass, and according to the special grades when applicable.*† [p. 25]

26.552 White grain sorghums (class I); subclasses defined. This class shall include all varieties of white grain sorghums, and may include not more than 10 percent of grain sorghums of other colors. Colored spots upon kernels that are otherwise white shall

¹The specifications of these standards shall not excuse failure to comply with the provisions of the Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1).

not affect their classification as white. This class shall be divided into three subclasses as follows:

SUBCLASS (A) WHITE KAFIR

This subclass shall include grain sorghums of the white kafir type, including hegari, and may include not more than 10 percent of other white grain sorghums, grain sorghums of other colors, or nongrain sorghums of other colors, singly or in any combination.

SUBCLASS (B) WHITE DURRA

This subclass shall include grain sorghums of the white durra type, and may include not more than 10 percent of other white grain sorghums, grain sorghums of other colors, or nongrain sorghums of other colors, singly or in any combination.

SUBCLASS (C) WHITE GRAIN SORGHUMS

This subclass shall include all grain sorghums of the class White grain sorghums not coming within the classification for subclass (A) White kafir, or subclass (B) White durra.

*† [p. 25]

26.553 Yellow grain sorghum (class II); subclasses defined. This class shall include all varieties of yellow and salmon-pink grain sorghums, and may include not more than 10 percent of grain sorghums of other colors. This class shall be divided into two subclasses as follows:

SUBCLASS (A) YELLOW MILO

This subclass shall include grain sorghums of the yellow milo type, and may include not more than 10 percent of other yellow grain sorghums, grain sorghums of other colors, or nongrain sorghums of other colors, singly or in any combination.

SUBCLASS (B) YELLOW GRAIN SORGHUMS

This subclass shall include all grain sorghums of the class Yellow grain sorghums not coming within the classification for subclass (A) Yellow milo.

*† [pp. 25–26]

26.554 Red grain sorghums (class III); subclasses defined. This class shall include all varieties of red grain sorghums, and may include not more than 10 percent of grain sorghums of other colors. This class shall be divided into two subclasses as follows:

SUBCLASS (A) RED KAFIR

This subclass shall include grain sorghums of the red kafir type and may include not more than 10 percent of other red grain sorghums, grain sorghums of other colors, or nongrain sorghums of other colors, singly or in any combination.

SUBCLASS (B) RED GRAIN SORGHUMS

This subclass shall include all grain sorghums of the class Red grain sorghums not coming within the classification for subclass (A) Red kafir.

*† [p. 26]

26.555 Brown grain sorghums (class IV); defined. This class shall include all varieties of brown grain sorghums, and may include not more than 10 percent of grain sorghums of other colors.*† [p. 26]

26.556 Grain sorghums; grade requirements.

Grade No.	Mini- mum test weight per bushel	Maximum limits of—				
		Mois- ture	Damaged kernels (grain sorghums, nongrain sorghums, and other grains)		Non- grain sor- ghums	Total cracked kernels, foreign material, and other grains
			Total	Heat- dam- aged		
	Pounds	Percent	Percent	Percent	Percent	Percent
1-----	55	14	2	0. 2	1	4
2-----	53	15	5	. 5	3	8
3-----	51	16	10	1. 0	5	12
4-----	49	18	15	3. 0	10	15
Sample grade-----	Sample grade shall include grain sorghums of any class or subclass which do not come within the requirements of any of the grades from No. 1 to No. 4, inclusive; or which contain inseparable stones and/or cinders; or which are musty, or sour, or heating, or hot; or which are badly weathered; or which have any commercially objectionable foreign odor except of smut; or which are otherwise of distinctly low quality.					

*† [p. 26]

26.557 Mixed grain sorghums (class V) defined; grade requirements. This class shall include all mixtures of grain sorghums not provided for in the classes from I to IV, inclusive.

Grade requirements and designations. The grade designation for Mixed grain sorghums shall include, successively, in the order named: (a) The number of the grade or the words "Sample grade", as the case may be; (b) the words "Mixed grain sorghums"; (c) the name and the approximate percentage of each class of grain sorghums which constitutes 10 percent or more of the mixture, in the order of its predominance, but if only one class exceeds 10 percent of the mixture, the name and approximate percentage of that class shall be included in the grade designation, followed by the name and approximate percentage of at least one other class. In those cases where Mixed grain sorghums consist of 70 percent or more of grain sorghums of the types white kafir, white durra, yellow milo, or red kafir, singly or combined, and not more than 10 percent of brown grain sorghums, the word "Mixed" shall be substituted for the words "Mixed grain sorghums", and the name of the appropriate subclass or subclasses for such type or types, as the case may be, shall be substituted for the class names, in the grade designation.*† [p. 26]

26.558 Dockage. Dockage includes sand, dirt, finely broken kernels, weed seeds, and other foreign material, which can be removed readily from the grain sorghums by means of a metal sieve perforated with round holes 21/2/64 inch in diameter. The quantity of dockage

*†For statutory and source citations, see note to § 26.101.

shall be calculated in terms of percentage based on the total weight of the grain including the dockage.

Dockage shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be. A fraction of a half percent shall be disregarded. The word "Dockage", together with the percentage thereof, shall be added to the grade designation.*† [p. 27]

26.559 Special grade; Bright grain sorghums. Definition. Bright grain sorghums shall be grain sorghums, of any class or subclass, which have good, natural color.

Grades. Bright grain sorghums shall be graded and designated according to the grade requirements of the standards applicable to such grain sorghums if they were not bright, and there shall be added to, and made a part of, the grade designation, preceding the name of the class or subclass, the word "Bright."*† [p. 27]

26.560 Special grade; Discolored grain sorghums. Definition. Discolored grain sorghums shall be grain sorghums of any class or subclass which are discolored, but which are not badly weathered.

Grades. Discolored grain sorghums shall be graded and designated according to the grade requirements of the standards applicable to such grain sorghums if they were not discolored, and there shall be added to, and made a part of, the grade designation, the word "Discolored."*† [p. 27]

26.561 Special grade; Weevily grain sorghums. Definition. Weevily grain sorghums shall be grain sorghums which are infested with live weevils or other insects injurious to stored grain.

Grades. Weevily grain sorghums shall be graded and designated according to the grade requirements of the standards applicable to such grain sorghums if they were not weevily, and there shall be added to, and made a part of, the grade designation, the word "Weevily."*† [p. 27]

26.562 Special grade; Smutty grain sorghums. Definition. Smutty grain sorghums shall be grain sorghums which have the kernels covered with smut spores, or which contain a quantity of smut masses in excess of a quantity equal to 10 masses in 50 grams of grain sorghums.

Grades. Smutty grain sorghums shall be graded and designated according to the grade requirements of the standards applicable to such grain sorghums if they were not smutty, and there shall be added to, and made a part of, the grade designation, the word "Smutty."*† [p. 27]

26.563 Grade factors; definitions—(a) Basis of grade determinations. Each determination of class, subclass, nongrain sorghums, total damage, heat damage, and inseparable stones and cinders, shall be upon the basis of the grain when free from dockage and when free from "cracked kernels, foreign material, and other grains."

All other determinations shall be upon the basis of the lot of grain as a whole.

(b) Percentages. Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(c) Percentage of moisture. Percentage of moisture shall be that ascertained by the moisture tester and the method of use thereof described in Department Bulletin No. 1375, issued by the United States Department of Agriculture, or that ascertained by any device and method which give equivalent results in the determination of moisture.

(d) Test weight per bushel. Test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(e) Other grains. Other grains shall include wheat, rye, oats, corn, barley, hull-less barley, flaxseed, emmer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, and soybeans.

(f) Nongrain sorghums. Nongrain sorghums shall include broom-corn, Sudan grass, Johnson grass, and cane seed.

(g) Cracked kernels, foreign material, and other grains. Cracked kernels, foreign material, and other grains, shall include kernels and pieces of kernels of grain sorghums, and all other matter except dockage that will pass through a metal sieve perforated with equilateral triangular perforations the inscribed circles of which are $\frac{5}{64}$ inch in diameter; also other grains and all other matter except grain sorghums and nongrain sorghums remaining on such sieve after screening.

(h) Damaged kernels. Damaged kernels shall be kernels and pieces of kernels of grain sorghums, nongrain sorghums, and other grains which are heat damaged, sprouted, frosted, badly ground damaged, moldy, or otherwise materially damaged.

(i) Heat-damaged kernels. Heat-damaged kernels shall be kernels and pieces of kernels of grain sorghums, nongrain sorghums, and other grains which have been materially discolored and damaged by external heat or as a result of heating caused by fermentation.*† [pp. 27–28]

PART 27—COTTON CLASSIFICATION UNDER THE UNITED STATES COTTON FUTURES ACT

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		27.262	Water packed.

CROSS REFERENCES

Cotton standards: See Part 28.

Cotton warehouse regulations: See Part 101.

SUBPART—REGULATIONS

DEFINITIONS

Section 27.1 Meaning of words. Words used in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§27.1 to 27.262, inclusive, issued under the authority contained in 39 Stat. 476, 40 Stat. 1351, 1352, 41 Stat. 725, 44 Stat. 1248; 26 U.S.C. 1090–1106.

†The source of §§ 27.1 to 27.107, inclusive, is Regulations of the Secretary of Agriculture under the United States Cotton Futures Act, July 6, 1936, effective Aug. 20, 1936, 1 F.R. 1179. (SRA, BAE 152)

27.2 Terms defined. As used throughout this subpart, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **The Act.** The United States Cotton Futures Act, approved August 11, 1916 (39 Stat. 476; 26 U.S.C. 1090–1106), as amended March 4, 1919 (40 Stat. 1348, 1351), May 31, 1920 (41 Stat. 725), and February 26, 1927 (44 Stat. 1248).

(b) **Exchange.** Exchange, board of trade, or similar institution or place of business, at, on, or in which a section 5 contract may be made.

(c) **Section 5 contract.** Contract of sale of cotton for future delivery mentioned in the Act, made at, on, or in any exchange in compliance with section 5 of the Act (39 Stat. 476, 40 Stat. 1351, 1352, 41 Stat. 725; 26 U.S.C. 1092).

(d) **Person.** Individual, association, partnership, or corporation.

(e) **Owner.** Person who owns, controls, or has the disposition of any cotton.

(f) **Bureau.** Bureau of Agricultural Economics of the United States Department of Agriculture.

(g) **Exchange inspection bureau.** The inspection bureau of the New York Cotton Exchange, the New Orleans Cotton Exchange, the Board of Trade of the city of Chicago, or of any other exchange which may have an organized inspection bureau recognized as such by the Chief of the Bureau, as the case may be.

(h) **Board of cotton examiners.** A board of cotton examiners established under the Act at any point.

(i) **Appeal Board of Review Examiners.** The Appeal Board of Review Examiners at Washington, D. C.*† [Reg. 1, sec. 2]

GENERAL

27.3 Requirements of section 5 of the Act. The inspection, sampling, and classification of cotton pursuant to section 5 of the Act, as amended, (39 Stat. 476, 40 Stat. 1351, 1352, 41 Stat. 725; 26 U.S.C. 1092), shall be performed as prescribed in this subpart. All tenders of cotton and settlements therefor under section 5 contracts shall be made subject to the regulations in this subpart. No contract shall for the purposes of this part be deemed to comply with section 5 of the Act as amended if it contain or incorporate therein, by reference or otherwise, any provision or any bylaw, rule, or custom of an exchange which is inconsistent or in conflict with any requirement of said section 5, nor if the parties enter into any collateral or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract which is inconsistent or in conflict with any requirement of said section 5.*† [Reg. 2, sec. 1]

27.4 Obligations and rights under Act; not affected by regulations. Nothing in this subpart shall be construed as relieving any party to a section 5 contract of any obligation imposed upon him, or as depriving him of any right to which he may be entitled, under any provision of the contract or exchange rule made a part

thereof which shall not be inconsistent with the Act as amended or the regulations made under the Act.*† [Reg. 2, sec. 2]

27.5 Effect of amendments. Any amendment to this subpart, unless otherwise stated therein, shall apply to all tenders of cotton and settlements therefor made on and after the effective date of such amendment, under section 5 contracts entered into prior, as well as subsequent, to such effective date.*† [Reg. 2, sec. 3]

27.6 Publications. Publications under the Act and this subpart may be made in service and regulatory announcements of the Bureau and by such other means as the Chief of the Bureau shall from time to time designate for the purpose.*† [Reg. 2, sec. 4]

27.7 Effect of regulations. As far as applicable, the regulations in this subpart shall have the same force and effect for the purposes of section 6A (39 Stat. 478; 26 U.S.C. 1093) as for the purposes of section 5 of the Act (39 Stat. 476, 40 Stat. 1351, 1352, 41 Stat. 725; 26 U.S.C. 1092).*† [Reg. 2, sec. 5]

ADMINISTRATION

27.8 Chief of Bureau. The Chief of the Bureau is charged with the supervision on behalf of the United States Department of Agriculture of the performance of all duties arising in the administration of the United States Cotton Futures Act (39 Stat. 476, as amended; 26 U.S.C. 1090–1106).*† [Reg. 3, sec. 1]

27.9 Boards of cotton examiners; Appeal Board. There shall be maintained at New Orleans, La., Houston and Galveston, Tex., Mobile, Ala., Savannah, Ga., Charleston, S. C., and when necessary in the opinion of the Chief of Bureau, at other points designated for the purpose, boards of cotton examiners. The members of such boards and the chairman of each shall be designated for the purpose by the Chief of the Bureau. The Appeal Board of Review Examiners established at Washington, D. C., is authorized to review the classification of any cotton in accordance with §§ 27.61–27.72. A board of supervising cotton examiners shall perform duties as assigned.*† [Reg. 3, sec. 2]

27.10 Supervisor of cotton inspection. The Chief of the Bureau whenever he deems necessary may designate an official or employee of the Department of Agriculture as supervisor of cotton inspection, who shall supervise the inspection and sampling, and the preparation of samples of cotton, for classification by a board of cotton examiners, and perform such other duties as may be required of him for the purposes of this subpart. The chairman of the board of cotton examiners may employ temporary assistants for such periods as the volume of the work may require and designate them as deputy supervisors, with full authority to perform the duties of supervisor of cotton inspection, in accordance with §§ 27.75, 27.77.*† [Reg. 3, sec. 3]

27.11 Chairman, board of cotton examiners; responsibility. Subject to this subpart and the instructions of the Chief of the Bureau, the chairman of each board of cotton examiners shall be re-

*†For statutory and source citations, see note to § 27.1.

sponsible for the proper performance of the duties imposed on such board and on the persons connected therewith.*† [Reg. 3, sec. 4]

CLASSIFICATION REQUESTS

27.12 Classification request for each lot of cotton. For each lot or mark of cotton of which the applicant desires separate classification and certification he shall make a separate written request in a form prescribed or supplied by the Bureau for that purpose.*† [Reg. 4, sec. 1]

27.13 Form of classification requests. Such classification request shall include the name of the exchange under the rules of which it is contemplated that delivery of such cotton may be made; and the lot number, if any, the marks, the number of bales, the location, the name of the owner of the cotton for whose account the classification is requested, and where necessary other information, under oath or otherwise, may be required by the Chief of the Bureau or the chairman of the board of cotton examiners. The form in which such additional information shall be furnished may be prescribed by the Chief of the Bureau or the chairman of the board of cotton examiners. The classification request shall be signed by the owner, or in his behalf by his agent. Such agent may, if authorized for the purpose, be the inspector in chief of the exchange inspection bureau by or under the direction of which the cotton is inspected and sampled.*† [Reg. 4, sec. 2]

27.14 Filing of classification requests. If there is a board of cotton examiners at the point at which it is contemplated that delivery of the cotton shall be made, such classification request, unless otherwise directed by the Chief of the Bureau, shall be filed with the chairman of the board of cotton examiners at such point. If there is no board of cotton examiners at the point of contemplated delivery, the request shall be filed with the supervisor of cotton inspection at such point. It shall be so filed within 1 year after the date upon which the samples were drawn from the cotton involved and before the classification of such cotton.*† [Reg. 4, sec. 3]

27.15 Withdrawal of classification requests. Any classification request may be withdrawn by the applicant at any time before the classification of the cotton covered thereby, subject to the payment of such fees, if any, as may be prescribed pursuant to §§ 27.80–27.92. Any classification request may be rejected for noncompliance with the Act or this subpart.*† [Reg. 4, sec. 4]

INSPECTION AND SAMPLES

27.16 Inspection, sampling; preparation. The inspection and sampling and the preparation of samples of cotton of which classification is desired shall be by or under the direction of an exchange inspection bureau and subject to the supervision and in accordance with the instructions of a supervisor of cotton inspection or a cotton examiner whose duties include such supervision.*† [Reg. 5, sec. 1]

27.17 Cotton to be made available for classification. The owner of the cotton shall cause it to be made available to such

supervisor or cotton examiner for such examination as may be necessary for the purposes of its classification, and shall take such steps as may be necessary to secure its proper inspection and sampling and the proper preparation and delivery of representative samples thereof at the place designated therefor, in accordance with this subpart, without expense to the Department of Agriculture.*† [Reg. 5, sec. 2]

27.18 Persons not to be employed for inspection or sampling. No person shall, after notice to the interested parties, be employed in any way in connection with any phase of the inspection and sampling of cotton, or the preparation of the samples thereof, for the purposes of classification under this subpart, who for good cause is disapproved by the Chief of the Bureau.*† [Reg. 5, sec. 3]

27.19 Rejection of cotton for classification. No cotton covered by a classification request filed as provided in this subpart shall be rejected by any person other than a cotton examiner, on account of grade or staple or otherwise, unless the request for the classification of the cotton so rejected shall be withdrawn by the person by whom it was made.*† [Reg. 5, sec. 4]

27.20 Drawing of samples of cotton. One sample shall be drawn from the top side of each bale and one from the bottom side. Each such sample shall weigh not less than 5 ounces, the two samples from each bale to weigh together not less than 10 ounces. The head of the bale shall be properly inspected, and any conditions not fully indicated by the samples shall be specified by the inspector or the sampler of the cotton in a written memorandum, which shall accompany the samples to the board of cotton examiners.*† [Reg. 5, sec. 5]

27.21 Preparation of samples of cotton. The samples from each bale shall be prepared as specified in this section. The sample from the top side and the sample from the bottom side shall each be broken into two parts. One part of the sample from the top side shall be placed with a part of the sample from the bottom side, making two sets of samples from each bale. One of such sets shall weigh as nearly as possible 6 ounces, equally divided between the two parts thereof representing the two sides of the bale. There shall be placed in each such set of samples between the two sides thereof a coupon showing the number of the tag attached to the bale from which such samples were drawn. The 6-ounce set of samples from each bale shall be called the original and the other set the duplicate.*† [Reg. 5, sec. 6]

27.22 Wrapping and marking of samples of cotton. The original sets of samples of the bales constituting a lot or mark to be classified separately shall be inclosed in one or more wrappers or containers, as the case may require. The wrappers or containers of original samples shall be so labeled or marked, or both, as to show that they contain original samples, together with the lot number, if any, the marks, and the number of bales, and such other information as may be necessary in accordance with the instructions of

*†For statutory and source citations, see note to § 27.1.

the chairman of the board to which the samples are to be delivered or the Chief of the Bureau.*† [Reg. 5, sec. 7]

27.23 Duplicate sets of samples of cotton. The duplicate sets of samples shall be inclosed in wrappers or containers separate and apart from the original sets in the manner prescribed for original samples in the foregoing section, except that the wrappers or containers shall be labeled or marked, or both, so as to show that they contain duplicate samples and shall be delivered to the person requesting the classification of the cotton.*† [Reg. 5, sec. 8]

27.24 Delivery of samples of cotton. The original sample from each such bale shall be delivered to the board of cotton examiners with which the classification request was filed, at its classification room, or shall be delivered at such other place as may be designated for the purpose by the chairman of the board or the Chief of the Bureau. No samples covered by pending classification requests which are ready for delivery as provided herein shall be withheld from such delivery except as authorized in writing by such chairman or the Chief of the Bureau. Each such original sample shall be considered representative of the bale for a period not exceeding 2 years from the date of the issuance of a cotton class certificate therefor under §§ 27.39–27.51.*† [Reg. 5, sec. 9]

27.25 Additional samples of cotton; drawing. In addition to the samples hereinbefore prescribed, separate samples, if desired, may be drawn and furnished to the owner of the cotton.*† [Reg. 5, sec. 10]

27.26 Handling of samples of cotton. All persons in any way connected with the inspection and sampling and handling of samples of cotton for the purpose of classification pursuant to the regulations in this subpart shall carefully handle them in such manner as not to cause loss of sand therefrom or any change otherwise in their representative character.*† [Reg. 5, sec. 11]

27.27 Rejection of sample; resampling. Any sample or set of samples which does not meet the requirements of the regulations in this subpart or which does not correctly represent the bale or bales from which drawn may be rejected by a supervisor of cotton inspection or a cotton examiner whose duties include the supervision or examination of such cotton. Whenever the supervisor of cotton inspection or the chairman of the board shall find it necessary in order to determine the true classification of any bale, such bale shall be re-inspected and, if necessary, resampled, and the new samples shall be delivered at the place designated therefor in accordance with this subpart.*† [Reg. 5, sec. 12]

27.28 Removal of original samples; conditions. The original samples may be removed by the holder of the cotton class certificate covering the same at any time within 2 weeks (a) after such certificate becomes invalid as provided in § 27.46, or (b) after 2 years from the date of the issuance of the cotton class certificate therefor under §§ 27.39–27.51, or (c) after the certificate has been surrendered for cancelation without the issuance of a new certificate in lieu thereof: Provided, That the chairman of the board may for good cause permit the removal of samples in accordance with this section without the

surrender of the certificate for cancelation. If the cotton covered by such certificate is classified as untenderable, the holder shall be allowed only 2 weeks from the date of the certificate within which to remove the sample; and in cases where part of a lot of cotton represented by one cotton class certificate is removed from the certified stock of any market and the bales so removed are canceled from such certificate at the request of the holder thereof in accordance with § 27.42, the request for the return of samples of the bales so canceled shall be made within 2 weeks of the date of such cancelation, in which case notice shall be given to the person making the request of the time when the samples are ready for removal and they shall be actually removed within 2 business days following such notification.*† [Reg. 5, sec. 13]

27.29 Removal of samples. In case a classification request shall be withdrawn prior to the classification of the cotton pursuant thereto, the applicant may, within 2 weeks after the date of such withdrawal, remove any samples of the cotton involved then in the possession of the Department of Agriculture.*† [Reg. 5, sec. 14]

27.30 Disposal of samples not removed. Samples not removed in accordance with §§ 27.28, 27.29 shall be disposed of in accordance with § 27.86.*† [Reg. 5, sec. 15]

CLASSIFICATION

27.31 Classification of cotton; method of determination. For the purposes of section 5 of the Act (39 Stat. 476, 40 Stat. 1351, 1352, 41 Stat. 725; 26 U.S.C. 1092) the classification of any cotton shall be determined only by cotton examiners designated as such by the Chief of the Bureau.*† [Reg. 6, sec. 1]

27.32 Order of classification. All cotton for which classification requests shall be pending shall be classified as far as practicable in the order in which proper samples thereof, ready for such classification, shall have been delivered to the board of cotton examiners whose duties include the examination thereof, except as otherwise provided in this subpart or when the chairman of the board or the Chief of the Bureau shall find that an emergency exists and shall order otherwise.*† [Reg. 6, sec. 2]

27.33 Exposing of samples for classification. Such classification shall not proceed until the samples, after being delivered to the board, shall have been exposed for such length of time as in the judgment of the chairman shall be sufficient to put them in proper condition for the purpose.*† [Reg. 6, sec. 3]

27.34 Classification procedure. Such classification shall proceed as rapidly as possible, but not when light or other conditions make uncertain the accuracy of the results to be obtained.*† [Reg. 6, sec. 4]

27.35 Lower class of two samples to prevail. In case a sample drawn from one portion of a bale is lower in class than one drawn from another portion of such bale, except as otherwise provided in this subpart, the classification of the bale shall be that of the sample showing the lower class.*† [Reg. 6, sec. 5]

*†For statutory and source citations, see note to § 27.1.

27.36 Cotton to be classified according to official standards. All cotton whether tenderable or untenderable shall be classified on the basis of the official cotton standards of the United States in effect at the time of such classification: Provided, however, That it shall be deemed a sufficient compliance with this section if cotton of tenderable length of staple shall be classified in steps of sixteenths of an inch.*† [Reg. 6, sec. 6]

27.37 Reduction in value of cotton; determination. If cotton be reduced in value, by reason of the presence of extraneous matter of any character or irregularities or defects, below its grade or below its apparent length of staple according to the official cotton standards of the United States, the grade or length of staple from which it is so reduced, and the grade or length of staple to which it is so reduced, and the quality or condition which so reduces its value, shall be determined and stated.*† [Reg. 6, sec. 7]

27.38 Terms defined for purposes of classification. For the purposes of classification the following terms shall be construed, respectively, to mean—

(a) **Cotton of perished staple.** Cotton that has the strength of fiber as ordinarily found in cotton destroyed or unduly reduced through exposure to the weather either before picking or after baling, or through heating by fire, or on account of water packing, or by other causes.

(b) **Cotton of immature staple.** Cotton that has been picked and baled before the fiber has reached a normal state of maturity, resulting in a weakened staple of inferior value.

(c) **Gin cut cotton.** Cotton that shows damage in ginning, through cutting by the saws, to an extent that reduces its value more than two grades.

(d) **Reginned cotton.** Cotton that has passed through the ginning process more than once, and cotton that, after having been ginned, has been subjected to a cleaning process and then baled.

(e) **Repacked cotton.** Cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots collected and rebaled, or cotton in a bale which is composed of a part of a larger bale or of two or more smaller bales or parts of bales.

(f) **False packed cotton.** Cotton in a bale (1) containing substances entirely foreign to cotton, (2) containing damaged cotton in the interior with or without any indication of such damage upon the exterior, (3) composed of good cotton upon the exterior and decidedly inferior cotton in the interior, in such manner as not to be detected by customary examination or (4) containing pickings or linters worked into the bale.

(g) **Mixed packed cotton.** Cotton in a bale which, in the samples drawn therefrom, (1) shows a difference of more than two grades, if of the same color; (2) if of the same grade but of different color, shows a difference of more than two color gradations; or (3) shows a difference of two or more grades and two or more color gradations; or (4) shows a difference in length of staple exceeding three thirty-seconds of an inch.

(h) Water packed cotton. Cotton in a bale that has been penetrated by water during the baling process, causing damage to the fiber, or a bale that through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior.*† [Reg. 6, sec. 8]

COTTON CLASS CERTIFICATES

27.39 Issuance of certificates. As soon as practicable after the classification of cotton has been completed by a board of cotton examiners it shall issue cotton class certificates showing the results of such classification. Each certificate shall bear the date of its issuance and shall be signed by the chairman of the board that classified the cotton. The certificate shall show the identification of the cotton according to the information in the possession of the board, the classification of the cotton according to its grade and length of staple, and such other facts as the Chief of the Bureau shall require.*† [Reg. 7, sec. 1]

27.40 Certificates to show only grades specified. (a) For any cotton classified by the board as tenderable on a section 5 contract it shall issue separate certificates. Such certificates shall show only cotton classified according to the grades specified in this section which is seven-eighths of an inch or more in length of staple:.

EXTRA WHITE

- No. 3 Extra White, or Good Middling Extra White
- No. 4 Extra White, or Strict Middling Extra White
- No. 5 Extra White, or Middling Extra White
- No. 6 Extra White, or Strict Low Middling Extra White
- No. 7 Extra White, or Low Middling Extra White

WHITE

- No. 1, or Middling Fair
- No. 2, or Strict Good Middling
- No. 3, or Good Middling
- No. 4, or Strict Middling
- No. 5, or Middling
- No. 6, or Strict Low Middling
- No. 7, or Low Middling

TINGED

- No. 3 Tinged, or Good Middling Tinged
- No. 4 Tinged, or Strict Middling Tinged

YELLOW STAINED

- No. 3 Yellow Stained, or Good Middling Yellow Stained

SPOTTED

- No. 3 Spotted, or Good Middling Spotted
- No. 4 Spotted, or Strict Middling Spotted
- No. 5 Spotted, or Middling Spotted

GRAY

- No. 3 Gray, or Good Middling Gray
- No. 4 Gray, or Strict Middling Gray

*†For statutory and source citations, see note to § 27.1.

(b) The foregoing provisions of this section shall in no case be construed to require the certification as tenderable of any bale classified as of one of the grades of spotted or gray cotton, which such grade is officially determined at the time of certification to be below the value of White cotton of the grade of Low Middling.*† [Reg. 7, sec. 2]

27.41 Certificates for untenderable cotton; issuance. For any cotton classified by the board as untenderable on a section 5 contract it shall issue separate certificates which shall show only cotton classified according to the grades specified in this section, or which is less than seven-eighths of an inch in length of staple, or which is otherwise declared to be undeliverable by the fifth subdivision of section 5 of the Act (39 Stat. 477, 40 Stat. 1351, 41 Stat. 725; 26 U.S.C. 1092 (a) (5)) :

EXTRA WHITE

No. 8 Extra White, or Strict Good Ordinary Extra White
No. 9 Extra White, or Good Ordinary Extra White

WHITE

No. 8, or Strict Good Ordinary
No. 9, or Good Ordinary

TINGED

No. 5 Tinged, or Middling Tinged
No. 6 Tinged, or Strict Low Middling Tinged
No. 7 Tinged, or Low Middling Tinged

YELLOW STAINED

No. 4 Yellow Stained, or Strict Middling Yellow Stained
No. 5 Yellow Stained, or Middling Yellow Stained

SPOTTED

No. 6 Spotted, or Strict Low Middling Spotted
No. 7 Spotted, or Low Middling Spotted

GRAY

No. 5 Gray, or Middling Gray

*† [Reg. 7, sec. 3]

27.42 New certificates; conditions of issuance. Upon the written request of the holder of a cotton class certificate issued under this subpart a new certificate shall be issued, without the reclassification of the cotton, to take the place of the former certificate for any cotton covered thereby, when necessary on account of the breaking or splitting of a lot or otherwise for the business convenience of such holder: Provided, That in any case where a part of a lot of cotton represented by any one cotton class certificate is removed from the certificated stock of any market the chairman of the board of cotton examiners may, upon request, cancel from said certificate the bales so removed. In any case where a new certificate is requested in accordance with this section, the former certificate shall be surrendered for cancelation, and such new certificate shall bear a new number and the date of its issuance and the date of original certification and shall otherwise comply with this subpart.*† [Reg. 7, sec. 4]

27.43 Lost certificate; duplicate. Upon the written request of the last holder of a valid cotton class certificate and a showing to the satisfaction of the chairman of the board of cotton examiners, which issued such certificate, that it has been lost or destroyed, and, if lost, that diligent effort has been made to find it without success, a new certificate shall be issued without the reclassification of the cotton. Such new certificate shall bear the same number and date of issuance as the lost or destroyed certificate, and shall include a statement to the effect that it is a duplicate issued in lieu of the lost or destroyed original, as the case may be.*† [Reg. 7, sec. 5]

27.44 Surrender of certificate. For good cause any certificate issued under this subpart shall be surrendered to the chairman of the board of cotton examiners which issued it, upon his request or upon the request of the Chief of the Bureau, and a new certificate complying with this subpart may be issued in substitution therefor. If such certificate be not surrendered upon such request it shall nevertheless be invalid for the purposes of section 5 of the Act and this subpart.*† [Reg. 7, sec. 6]

27.45 Validity of cotton class certificates. Each cotton class certificate for cotton classified as tenderable shall be valid for use in the tender of such cotton on a section 5 contract made in accordance with the Act and this subpart and the rules of an exchange not inconsistent therewith.*† [Reg. 7, sec. 7]

27.46 Invalidity of cotton class certificates. Any cotton class certificate shall become invalid for use in the tender or delivery of the cotton covered thereby on a section 5 contract whenever such cotton shall be removed from the place of storage specified therein, except when it is handled and re-stored or transferred to a different place of storage under the supervision of the same exchange inspection bureau, or except as provided in §§ 27.73–27.79.*† [Reg. 7, sec. 8]

27.47 No storage of cotton for classification at disapproved place. No cotton submitted for classification under section 5 of the Act (39 Stat. 476, 40 Stat. 1351, 1352, 41 Stat. 725; 26 U.S.C. 1092) shall be located or stored at a place disapproved for the purpose by the chairman of board of cotton examiners or the Chief of the Bureau on account of being unsuitable for the safekeeping or proper storage of such cotton, or on account of the failure or refusal of the custodian thereof to comply or to permit compliance with the requirements of this subpart so far as he may be involved therein. Notice of such disapproval shall be given in such manner as the Chief of the Bureau may direct. Thereafter every cotton class certificate, if any, previously issued for cotton located or stored at such place shall be invalid for the delivery of such cotton on a section 5 contract, unless the cotton shall be removed under the supervision of the exchange inspection bureau, or a representative of the Department of Agriculture designated for the purpose by the chairman of the board of cotton examiners or the Chief of the Bureau, to a place which shall be suitable for the purpose. Upon such removal and the request of the holder of the cotton class certificate for such cotton a new

*†For statutory and source citations, see note to § 27.1.

certificate in lieu thereof, as provided elsewhere in this subpart, shall be issued to him.*† [Reg. 7, sec. 9]

27.48 Cotton withdrawn from storage. The exchange inspection bureau under the supervision or control of which any cotton classified pursuant to this subpart shall be held or stored shall furnish to the board of cotton examiners which classified such cotton, on the first business day of each week, a written statement of all cotton withdrawn from storage, or the lot number or other identification of which has been changed, or which has otherwise been removed from the supervision or control of such exchange inspection bureau during the next preceding week. Such statement shall show each lot number, and, if changed, the new lot number, and in case of the withdrawal or removal of a portion only of the lot, the tag numbers of the bales so withdrawn or removed. If such removal shall be to a different place of storage under the supervision or control of the exchange inspection bureau, the statement shall show the new location.*† [Reg. 7, sec. 10]

27.49 Tender or delivery of cotton; conditions. Subject to the provisions of §§ 27.52–27.56, 27.65, no cotton shall be tendered or delivered on a section 5 contract unless on or prior to the date fixed for delivery under such contract, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a valid outstanding cotton class certificate complying with the regulations in this subpart, showing such cotton to be tenderable on a section 5 contract.*† [Reg. 7, sec. 11]

27.50 Board of cotton examiners; procedure. Whenever any exchange shall put into effect a system of handling cotton and samples thereof, approved for the purpose by the Chief of the Bureau, under which a board of cotton examiners may place its certificate of classification directly on the storage or press receipt covering and properly identifying the cotton involved, the board of cotton examiners may proceed in accordance with such system and need not use the separate cotton class certificates otherwise required by this subpart.*† [Reg. 7, sec. 12]

27.51 Reissuance of Form C certificate, or transfer certificate. Upon the request of the holder of a valid Form C certificate or of a transfer certificate issued in accordance with the United States Cotton Standards Act and the regulations of the Secretary thereunder, and the surrender for cancelation of such certificate to the chairman of a board of cotton examiners, there shall be issued in its stead a cotton class certificate or certificates in proper form for use under this Act and the regulations in this subpart. If the classification represented in such Form C certificate shall have been reviewed, such review shall be shown on the cotton class certificate; otherwise the classification shown on the cotton class certificate shall be subject to review as provided in this subpart. The issuance of cotton class certificates under this Act and the regulations in this subpart upon the surrender of transfer certificates issued under the United States Cotton Standards Act shall conform in all respects to the provisions

of §§ 27.73–27.79. Transfer certificates issued under the United States Cotton Standards Act may be validated for use in the delivery of cotton as provided in § 27.78.*† [Reg. 7, sec. 13]

CROSS REFERENCES: For regulations under the Cotton Standards Act, see Part 28. For form C certificate, see § 28.54. For transfer certificate, see §§ 28.70–28.75.

DELAYED CERTIFICATION

27.52 Delivery without certification. If upon the date fixed for delivery in accordance with section 5 of the Act (39 Stat. 476, 40 Stat. 1351, 1352, 41 Stat. 725; 26 U.S.C. 1092) cotton class certificates shall not have been issued by a board of cotton examiners for cotton to be delivered pursuant to such notice, samples of which cotton shall have been in the custody of the board for the time hereinafter prescribed, the delivery of such cotton may be made upon compliance with and subject to the conditions specified in §§ 27.52–27.56. Sections 27.52–27.56 shall not apply to cotton upon which a review is pending.*† [Reg. 8, sec. 1]

27.53 Transferable notice of delivery; requirements. On the date of giving the transferable notice of the delivery in accordance with section 5 of the Act (39 Stat. 476, 40 Stat. 1351, 1352, 41 Stat. 725; 26 U.S.C. 1092) the person issuing such notice or the person on whose behalf it was issued shall also give written notice to the board or officer with whom the classification request was required to be filed, specifying the date of delivery and the number of bales so to be delivered which have not been certified. In such notice, or later in writing before the delivery of the samples to the board, he shall specify the lot numbers of the cotton so to be delivered.*† [Reg. 8, sec. 2]

27.54 Inspection and sampling under transferable notice. Such cotton must have been duly inspected and sampled, and the original samples thereof properly prepared in accordance with the regulations in this subpart must be delivered to the board not later than the date of the issuance of the transferable notice, except when the delivery day fixed by such transferable notice is the last delivery day in the month of delivery. In such case the cotton must have been duly inspected and sampled, and the original samples thereof properly prepared in accordance with the regulations in this subpart must have been delivered to the board in accordance with all regulations applicable and in readiness for classification not later than 8 p. m. of the second business day preceding such last delivery day.*† [Reg. 8, sec. 3]

27.55 Requirements in lieu of cotton class certificates on delivery day. If on the morning of the delivery day specified in the transferable notice the cotton class certificates covering the cotton involved are not ready for delivery when called for, the tenderer of the cotton shall present to the chairman of the board of cotton examiners, or to his representative authorized for the purpose, a written notice stating to the best of his knowledge and belief the true grade of each individual bale to be delivered, properly identifying each bale with its grade. If the foregoing requirements of §§ 27.52–27.56 shall have been complied with, the chairman of the board, or his duly authorized

*†For statutory and source citations, see note to § 27.1.

representative, shall cause to be written or stamped on such notice a statement validating it for use in the tender only on such delivery day of the cotton covered thereby pending the issuance of cotton class certificates in accordance with the regulations in this subpart. The tenderer shall on such delivery day deliver such notice to the receiver of the cotton, together with the warehouse receipts and such other papers as may be necessary to the delivery of the cotton on such day.*† [Reg. 8, sec. 4]

27.56 Obligations of person making tender. The person making the tender shall deliver the cotton class certificates therefor to the receiver of the cotton before the close of business hours on the date of the issuance thereof, if delivered to such tenderer before 11 a. m. on that day. If the cotton class certificates be delivered to him after 11 a. m. on that day, the tenderer shall in turn deliver them to the receiver before 11 a. m. on the next following business day. There shall be no right of replacement of bales shown by such certificates to be untenderable.*† [Reg. 8, sec. 5]

POSTPONED CLASSIFICATION

27.57 Request for postponement. If the applicant desires the postponement of the classification of any cotton covered by a classification request filed pursuant to the regulations in this subpart until later notice, the original classification request must so state, or the applicant must so advise the board in writing before the classification has been entered upon. Such request must show cause and that it is not made merely for dilatory reasons.*† [Reg. 9, sec. 1]

27.58 Postponed classification; must be within year. If thereafter the classification of the cotton be desired, notice thereof must be filed not later than the expiration of 1 year after the date upon which the samples were drawn from the cotton, and the original samples must have remained continuously in the possession of the board or under its control.*† [Reg. 9, sec. 2]

27.59 Postponed classification; interference. Classification pursuant to such suspended request shall not be allowed to interfere with or delay the classification of other samples previously made ready for classification or which are otherwise entitled to priority.*† [Reg. 9, sec. 3]

27.60 When original request deemed withdrawn. If the period of 1 year hereinbefore specified shall expire without the filing of the notice of desire for classification, the applicant shall be deemed to have withdrawn the original request for the classification of such cotton.*† [Reg. 9, sec. 4]

REVIEWS

27.61 One review of classification. One review only of the classification of the cotton covered by any cotton class certificate may be obtained as provided in §§ 27.62–27.72, such review to be performed by the Appeal Board of Review Examiners.*† [Reg. 10, sec. 1]

27.62 Conditions for review of classification. The person for whom the classification of any cotton shall have been performed

under this subpart may have a review of the classification of the cotton covered by any certificate by filing written application therefor before the delivery of such cotton on a section 5 contract and not later than the expiration of the seventh calendar day following the date of the first certification of the cotton involved: Provided, That if such seventh calendar day shall be a Sunday or a holiday, application for review may be filed during the forenoon of the next following business day.*† [Reg. 10, sec. 2]

27.63 Review of classification; application; form. Any receiver of cotton upon a section 5 contract may have a review of the classification of any such cotton of which the classification has not been previously reviewed by filing a written application within 7 calendar days following the date of the delivery of cotton class certificates to him in accordance with the regulations in this subpart. When more than 5,000 bales of cotton shall have been delivered to the same receiver on the same date of delivery and at the same point of delivery, he may, upon proper showing of the facts, be allowed 5 additional calendar days for filing his application for the review of the classification of any such cotton at such point of delivery, provided written request for such extension is filed within 7 calendar days following the date of such delivery. In the event of the reissue of certificates to replace any such certificates delivered to him, the receiver may have a review of the classification of the cotton covered by such reissued certificates, provided such review is requested within the time herein prescribed. Every application for review shall be submitted in duplicate on a form furnished or approved by the Bureau; shall specify the name and address of the party, if any, from whom the cotton was received on a section 5 contract; shall include the lot numbers, if any, and the marks; and a copy of such application shall be mailed by the chairman of the board to the other party at interest. In any case provided for in this section wherein the last calendar day falls on a Sunday or a holiday the application for review may be filed during the forenoon of the next following business day.*† [Reg. 10, sec. 3]

27.64 Application for review; filing. The written application for a review shall be filed with the board, or in the absence of a board, with the supervisor of inspection at the point where the cotton was or may be delivered in settlement of a contract under the Act and this subpart. Such written application for review shall in each case be in the hands of such board or supervisor within the time specified for applying for review; Provided, That any board of cotton examiners may designate an officer of the Bureau located at another point to receive applications for review, and to certificate the results of the reviews requested therein, and in such cases the applications for review shall be in the hands of the officer so designated within the time herein specified for applying for review. Any person applying for a review shall, upon call of the chairman of the board or the supervisor of inspection with whom such application was filed, surrender the cotton class certificate or certificates covering the cotton involved.*† [Reg. 10, sec. 4]

*†For statutory and source citations, see note to § 27.1.

27.65 Completion; review of classification. In any case where an application for review has been filed with respect to cotton previously classified as tenderable, such review may be completed notwithstanding the subsequent tender of such cotton on a section 5 contract. Pending the completion of such review, the cotton class certificates or written notice evidencing the grade of the cotton involved shall be marked or stamped by the chairman of the board of cotton examiners to show that such review is pending.*† [Reg. 10, sec. 5]

27.66 Dismissal of application for review. Any application for review may be dismissed whenever it shall be found by the chairman of the board or the Chief of the Bureau that it was filed without good cause or for dilatory purposes.*† [Reg. 10, sec. 6]

27.67 Use of new samples in reviews. Unless the use of new samples shall be necessary in the judgment of the chairman of the board, a review pursuant to §§ 27.61–27.72 shall be made by reference to the samples (if any) of the cotton involved in the possession of the board; but if a review is requested after 2 years from the date of original certification of the cotton involved, the person requesting such review shall cause new samples to be drawn for the purpose and submitted to such board in accordance with the regulations in this subpart.*† [Reg. 10, sec. 7]

27.68 Changing of bale classification. The classification of any bale shown by the original cotton class certificate shall be changed only when it shall appear upon the review that such classification was clearly erroneous.*† [Reg. 10, sec. 8]

27.69 Classification review; notation on certificate. If the classification of all the cotton as shown by the cotton class certificate be found to be correct, there shall be placed upon the certificate a notation, which shall be signed by the chairman of the board and dated, to the effect that the classification of the cotton covered by such certificate has been reviewed and determined to be as stated in such certificate. Thereupon the certificate shall be returned to the person who requested the review.*† [Reg. 10, sec. 9]

27.70 Classification changed; effect on certificate. If the classification of any bale of cotton as shown by the cotton class certificate shall be changed, such certificate shall be canceled and there shall be issued in lieu thereof a new certificate showing the classification of each bale as determined upon such review: Provided, however, That if the certificate of classification is placed upon the warehouse receipt it shall be sufficient to enter upon the receipt a statement that the classification has been reviewed, the date of review, and the classification given the bale upon such review. If a new certificate is issued there shall be incorporated in it a statement to the effect that the classification of the cotton covered thereby has been reviewed and determined to be as stated in such certificate. Such certificate shall bear a new number and the date of its issuance, and shall be delivered to the person who requested the review.*† [Reg. 10, sec. 10]

27.71 Replacement of untenderable cotton. If the determination of a review granted to a receiver of cotton tendered upon a section 5 contract shows cotton previously classed as tenderable to be ac-

tually untenderable, the tenderer shall replace the cotton so found to be untenderable. Such replacement shall be made not later than the expiration of the fifth business day following the date of the issuance of the review certificate, by delivering to the receiver other cotton shown to be tenderable by cotton class certificates complying with the regulations in this subpart, which certificates he shall deliver to the receiver.*† [Reg. 10, sec. 11]

27.72 Withdrawal of application for review. Any application for review may be withdrawn by the applicant at any time before the review classification of the cotton covered thereby has been completed, subject to the payment of such fees, if any, as may be assessed pursuant to §§ 27.80–27.92.*† [Reg. 10, sec. 12]

TRANSFERS OF COTTON

27.73 Supervision of transfers of cotton. Whenever the owner of any cotton inspected and sampled for classification pursuant to this subpart, or for which he holds valid cotton class certificates, desires to transfer such cotton to a different place for the purpose of having it made available for delivery upon a section 5 contract at the place to which it is to be removed, the procedure shall be as outlined in §§ 27.73–27.79. Conformity to this procedure shall not be necessary in the case of the transfer of cotton between different warehouses at the same place when such transfer is effected under the supervision of the exchange inspection bureau, or a representative of the Bureau authorized for that purpose at such place. In such cases the exchange inspection bureau shall report the facts to the board of cotton examiners, in accordance with § 27.48. For the purposes of this subpart, Houston and Galveston, Tex., shall be regarded as one place.*† [Reg. 11, sec. 1]

27.74 Form of request for supervision of transfer. The person who made the request for classification or the holder of the cotton class certificate therefor shall file with the chairman of the board of cotton examiners with which the classification request was filed, or which issued the certificate, or, in case there be no board of cotton examiners at the point where the cotton is situated, with the supervisor of cotton inspection, a written request for the supervision of such transfer. Such request shall be in such form as the Chief of the Bureau shall prescribe. It shall properly identify the cotton and shall state the respective locations from and to which the cotton is to be transferred. If the cotton class certificate for such cotton has previously been issued by the board, the holder thereof shall surrender such certificate to the board or to the supervisor of cotton inspection, as the case may be, for cancelation before such transfer shall take place. No single request for supervision of transfer shall cover both cotton of which the classification has been reviewed and that of which the classification has not been reviewed; nor shall the same request cover both tenderable and untenderable cotton; and no single transfer lot shall include more than 50 bales.*† [Reg. 11, sec. 2]

27.75 Transfer number; seal or tag on each bale. As soon as practicable after the filing of the request the chairman of the board

*†For statutory and source citations, see note to § 27.1.

of cotton examiners shall assign to it a transfer number. The owner of the cotton shall thereupon have such number legibly branded upon all bales covered by such transfer request. As soon as practicable thereafter the person filing such request shall make the cotton available to a supervisor or deputy supervisor of cotton inspection or a cotton examiner, who shall examine each bale of cotton covered by the transfer request, and shall attach to it, if found to be properly branded, a durable tag or seal provided for the purpose by the Bureau. Such tag or seal shall remain the property of the United States after being so attached while the bale is under the supervision of the Department of Agriculture. No person, unless authorized by the Bureau, shall remove or in any way tamper with such attached tag or seal or shall otherwise interfere with any person employed under the Act in the performance of his duties, while the cotton is under supervision of the Bureau.*† [Reg. 11, sec. 3]

27.76 Transfer certificate; form. Thereupon there shall be issued to the person requesting the same a transfer certificate in form prescribed for the purpose by the Chief of the Bureau, properly identifying the cotton according to such tags or seals, and the other means of identification in the possession of the Bureau, showing the respective locations from which and to which the cotton is to be transferred, the classification of the cotton as previously determined, and whether or not such classification has been reviewed.*† [Reg. 11, sec. 4]

27.77 New certificate without reclassification. When the cotton shall have been delivered for storage at the place of its destination and the transfer certificate shall have been surrendered to the chairman of the board at such place or to such other official as the Chief of the Bureau shall designate for the purpose, a supervisor or deputy supervisor of cotton inspection or a cotton examiner, or other representative of the Bureau authorized for the purpose, shall examine each bale of cotton covered by such transfer certificate. If he finds that the entire lot of cotton represented by the transfer certificate has been preserved unbroken and that the identity of the bales has been properly preserved, there shall be issued to the person requesting the same a cotton class certificate or certificates complying with the regulations in this subpart, valid for use at such destination without the reclassification of the cotton; except that whenever the exchange at the point of destination shall have put into effect a system of handling cotton and samples thereof approved for the purpose by the Chief of the Bureau, under which a board of cotton examiners may place its certificate of classification directly on the storage or press receipt covering and properly identifying the cotton involved, the preservation unbroken of the entire lot represented by the transfer certificate shall not be required.*† [Reg. 11, sec. 5]

27.78 Validation of transfer certificate. If on the morning of the delivery day specified in the transferable notice a supervisor of cotton inspection at the point to which the cotton has been transferred shall have determined the identity of the cotton to have been properly preserved but a new cotton class certificate has not been issued in lieu of the transfer certificate, the chairman of the board of cotton exam-

iners at such point shall cause to be placed upon the face of the transfer certificate a statement validating such transfer certificate for use in the tender only on such delivery day of the cotton covered thereby, and shall return the same to the owner of the cotton. Upon demand of the chairman of the board of cotton examiners a holder of such validated transfer certificate shall surrender the same, and the chairman of the board of cotton examiners shall issue as soon as practicable thereafter a cotton class certificate or certificates in its stead.*† [Reg. 11, sec. 6]

27.79 Supervision of transfers; new certificates; conditions. Supervision of transfers in accordance with this subpart shall not be granted, nor shall any certificate be issued with respect to any bale which is found to be in such condition that its classification is different from that shown by the cotton class certificate, unless such bale shall be reinspected and, if necessary, reclassified in accordance with this subpart.*† [Reg. 11, sec. 7]

COSTS OF APPLICATION AND CERTIFICATION

27.80 Fees. For the classification and certification of cotton pursuant to this subpart, except as otherwise hereinafter provided, whether such cotton be tenderable or not, the person requesting the classification shall pay a fee of 25 cents per bale.*† [Reg. 12, sec. 1]

27.81 Fees; certificates. (a) For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, on account of the breaking or splitting of a lot of cotton covered thereby, or otherwise for his business convenience, without the reclassification of the cotton involved, the person requesting such substitution shall pay a fee of 25 cents. For the transfer at the request of the holder thereof of the certificate on a single-bale warehouse receipt to another single-bale warehouse receipt when made necessary by the transfer of the cotton from one place of storage to another under the supervision of an exchange inspection bureau, as provided in § 27.48, the person making the request shall pay a fee of 15 cents for each bale of cotton involved to cover the cost of such service and the handling of samples incident thereto. In cases where part of a lot of cotton represented by any one cotton class certificate is removed from the certificated stock of any market and the bales so removed are canceled from such certificate at the request of the holder thereof, in accordance with § 27.42, no charge shall be made for such cancellation unless the holder requests the return of the official samples representing the bales so canceled, in which event a service charge of 10 cents will be assessed for each bale involved. Any request for the return of samples must be made within 2 weeks of the date of such cancellation.

(b) When any cotton covered by multiple-bale certificates is removed from one place of storage to another under the supervision or control of an exchange inspection bureau, a notation of the change of the place of storage may be entered on the certificates for a service charge of 5 cents for each certificate involved.*† [Reg. 12, sec. 2]

CROSS REFERENCE: For cotton warehouse receipts, see §§ 101.16–101.22.

*†For statutory and source citations, see note to § 27.1.

27.82 Fees; review of classification. For the review of the classification of any cotton the fee shall be 30 cents per bale, which shall cover the review and any expense incident to forwarding and returning samples or other additional expense connected therewith, whether the review classification is performed at Washington, D. C., or by a committee of such appeal board functioning temporarily in the field.*† [Reg. 12, sec. 3]

27.83 No fees for certain certificates. No fee shall be collected for a new cotton class certificate issued in lieu of a prior certificate solely for the purpose of correcting clerical errors therein or for the purpose of substituting a new form applicable to outstanding certificates, or without an application therefor.*† [Reg. 12, sec. 4]

27.84 Fees; supervision of transfer of cotton. For the supervision of the transfer of cotton in accordance with §§ 27.73–27.79, including such new certificates incidental thereto as may be necessary for the delivery of such cotton upon a section 5 contract without its reclassification, the applicant for such transfer supervision shall pay a fee of 30 cents per bale.*† [Reg. 12, sec. 5]

27.85 Fees; withdrawn applications. When the request for classification or the application for the review of the classification of any cotton shall be withdrawn after the classification of such cotton has been started pursuant to such request or application, the person making such request or application shall pay the fee prescribed by § 27.80 or § 27.82 as to any cotton classified prior to such withdrawal.*† [Reg. 12, sec. 6]

27.86 Proceeds from sale of samples and loose cotton. Samples not removed in accordance with this subpart and loose cotton separated from the samples in the handling and classification thereof by a board shall become the property of the Department of Agriculture. Such cotton shall be disposed of in the manner prescribed for other property by the property regulations of the Department of Agriculture, but the proceeds thereof shall be deemed to be part of the costs of classification pursuant to the regulations in this subpart. Such proceeds shall be deposited with other moneys received in payment of costs to the credit of the fund provided by the seventh subdivision of section 5 of the Act (39 Stat. 477, 40 Stat. 1352, 41 Stat. 725; 26 U.S.C. 1092 (a) (7)).*† [Reg. 12, sec. 7]

27.87 Fees; information re classification. Whenever, in order to issue any cotton class certificate or to validate a tenderer's written notice of grade in time to permit of its use in consummating the delivery on a fixed day of the cotton covered thereby, the person who requested the classification or the person on whose behalf such request was made shall also request the transmission by telegraph, telephone, or radio of information concerning the classification of such cotton, the person making the request for the classification shall pay in addition to the costs hereinbefore prescribed the sum of 5 cents a bale in liquidation of the cost of tolls so incurred.*† [Reg. 12, sec. 8]

27.88 Travel expense. When the inspection and sampling or the supervision of the transfer of any cotton shall be performed at a place other than that where a board of cotton examiners or super-

visor of cotton inspection is regularly located, the person making the request for the classification or the supervision of the transfer of the cotton shall pay, in addition to the costs hereinbefore prescribed, the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department of Agriculture, by the persons employed by the Department of Agriculture to supervise such inspection and sampling or transfer.*† [Reg. 12, sec. 9]

27.89 Expenses; inspection; sampling. The expense of inspection and sampling, the preparation of the samples, and the delivery of such samples to the classification room of the board of cotton examiners, or other place specifically designated for the purpose by the Chief of the Bureau, or by the chairman of such board, shall be borne by the party requesting the classification of the cotton involved.*† [Reg. 12, sec. 10]

27.90 Bills for payment of fees and expenses. The Bureau shall deliver bills to all persons from whom payment for fees or expenses on account of such services shall be due. Such bills shall be rendered as soon as practicable after the 15th and the last day of each month for the amounts due and unpaid on such dates. When necessary, in the discretion of the chairman of the board or the Chief of the Bureau, any bill may be rendered at an earlier date for any fees then due by the person to whom such bill shall be rendered. Payment of any such bill shall be made as soon as possible after the rendition thereof; but in any event not later than the expiration of 2 weeks thereafter.*† [Reg. 12, sec. 11]

27.91 Advance deposit may be required. If requested by the chairman of the board of cotton examiners with which the classification request is required to be filed or by the Chief of the Bureau, the person from whom any payment under this subpart may become due shall make an advance deposit to cover such payment in such amount as may be necessary in the judgment of the official requesting the same.*† [Reg. 12, sec. 12]

27.92 Method of payment; advance deposit. Any payment or advance deposit under this subpart shall be by certified check or by draft or post-office or express money order, payable to the order of "United States Department of Agriculture", and may not be made in cash except in cases where the total payment or deposit does not exceed \$1.*† [Reg. 12, sec. 13]

SPOT MARKETS

27.93 Bona fide spot markets. The following markets have been determined, after investigation, and are hereby designated to be bona fide spot markets within the meaning of the Act:

Atlanta, Ga.	Galveston, Tex.	Montgomery, Ala.
Augusta, Ga.	Houston, Tex.	New Orleans, La.
Charleston, S. C.	Little Rock, Ark.	Norfolk, Va.
Dallas, Tex.	Memphis, Tenn.	Savannah, Ga.
Fort Worth, Tex.	Mobile, Ala.	

*† [Reg. 13, sec. 1]

*†For statutory and source citations, see note to § 27.1.

27.94 Spot markets (for certain determinations only). The following are designated as spot markets for the purpose of determining, as provided in section 6 of the Act (39 Stat. 478, 44 Stat. 1248; 26 U.S.C. 1092 (c)), the differences above or below the contract price which the receiver shall pay for grades other than the basis grade tendered or delivered in settlement of a section 5 contract:

Augusta, Ga.
Dallas, Tex.
Galveston, Tex.
Houston, Tex.

Little Rock, Ark.
Memphis, Tenn.
Montgomery, Ala.
New Orleans, La.

Norfolk, Va.
Savannah, Ga.

*† [Reg. 13, sec. 2]

PRICE QUOTATIONS AND DIFFERENCES

27.95 Spot markets to conform to Act and regulations. Every bona fide spot market shall, as a condition of its designation and of the retention thereof for the purposes of the Act, conform to sections 6, 7, and 8 of the Act (39 Stat. 478, 479, as amended; 26 U.S.C. 1092 (c), 1097, 1099 (c)) and the requirements of §§ 27.96–27.102.*† [Reg. 14, sec. 1]

27.96 Basis of prices in bona fide spot markets. The prices or values of Middling cotton and the differences between the prices or values of Middling cotton and of other grades of cotton in each bona fide spot market shall be based solely upon the grades of the official cotton standards of the United States and shall be the actual commercial prices or values and differences established by the sale of spot cotton in such bona fide spot market. Such prices or values and differences shall be determined as provided in said sections of the Act and §§ 27.96–27.102.*† [Reg. 14, sec. 2]

27.97 Quotation committees; establishing. There shall be established and maintained in each bona fide spot market a competent quotation committee. The organization of such committee and its personnel shall be subject to the approval of the Chief of the Bureau, and any member of such committee who for good cause is disapproved by the Chief of the Bureau shall, after due notice, be replaced by another person acceptable for the purpose to the Chief of the Bureau. Such committee shall impartially and carefully ascertain and publish on each business day the value of Middling cotton and the differences between the prices or values of Middling cotton and of other grades of cotton represented by the official cotton standards of the United States. The committee shall disregard any transactions which it finds were not bona fide, or were made for the purpose of influencing its action improperly, or for other good reasons do not represent truly the commercial values of spot cotton in its market. The time or times of ascertaining and publishing such prices or values and differences shall be uniform in all the bona fide spot markets and shall be fixed subject to the approval of the Chief of the Bureau so as to carry out the purposes of sections 5 and 6 of the Act (39 Stat. 476, 478, as amended; 26 U.S.C. 1092). The committee shall cause its action to be communicated at once to each futures exchange and to the Bureau.*† [Reg. 14, sec. 3]

27.98 Duties of quotation committees. Each such quotation committee shall provide itself with or have ready access to a full set of the practical forms of the official cotton standards of the United States for grade and color of upland cotton, each box of which shall contain a certificate of the Secretary of Agriculture which is not more than 18 months old and which has not been canceled as provided elsewhere in this subpart. Such committee, or a person authorized to act for it, shall obtain complete and satisfactory information not later than the close of business on each business day as to all sales of spot cotton since the close of the next preceding business day, including the grades, the prices or price basis, and other terms of sale in sufficient detail to enable the committee to perform its duties accurately. Such committee shall also have access to the samples representing the cotton involved in such sales. Any record of such information shall be subject to examination at any reasonable time by a duly authorized representative of the Bureau, and the samples of the cotton as long as they remain in the possession of any party to the transaction in such market shall also be available for such examination.*† [Reg. 14, sec. 4]

27.99 Value of grade where no sale; determination. Whenever no sale of a particular grade of cotton shall have been made on a given day in a particular bona fide spot market, the value of such grade in that market on that day, which shall be used in calculating the commercial differences to be applied, pursuant to section 6 of the Act (39 Stat. 478, 44 Stat. 1248; 26 U.S.C. 1092 (c)), in the settlement of a section 5 contract, shall be determined in accordance with § 27.100.*† [Reg. 14, sec. 5]

27.100 Values of grades. (a) If on such given day there shall have been in such market both a sale of any higher grade and a sale of any lower grade, the average of the declines, or advances, or decline and advance, as the case may be, of the next higher grade and the next lower grade so sold shall be deducted from, or added to, as the case may be, the value, on the last preceding business day, of the grade the value of which on such given day is sought to be ascertained.

(b) If on such given day there shall have been in such market a sale of either a higher or a lower grade, but not sales of both, the decline or advance of the next higher or the next lower grade so sold shall be deducted from, or added to, as the case may be, the value on the last preceding business day of the grade the value of which on such given day is sought to be ascertained.

(c) If on such given day there shall have been in such market no sale of spot cotton of any grade, the value of each grade shall be deemed to be the same as its value therein on the last preceding business day, unless in the meantime there shall have been bona fide bids and offers, or sales of hedged cotton, or other sales of cotton, or changes in prices of future contracts made subject to the Act, which in the usual course of business would clearly establish a rise or fall in the value of spot cotton in such market, in which case such rise or fall may be calculated and added to or deducted from the value on the preceding business day of cotton of all grades affected thereby.*† [Reg. 14, sec. 6]

*†For statutory and source citations, see note to § 27.1.

27.101 Values; expression. For the purpose of this subpart values shall be expressed in terms of cents and hundredths of a cent. A fraction of a hundredth, when equal to, or greater than, the half thereof, shall be treated as a hundredth, and when less than a half of a hundredth shall be disregarded.*† [Reg. 14, sec. 7]

27.102 Administration. The details of the method of carrying out the provisions of this subpart in each bona fide spot market shall be subject to the approval of the Chief of the Bureau or shall be prescribed by him.*† [Reg. 14, sec. 8]

OFFICIAL COTTON STANDARDS

27.103 Official cotton standards; forms. (a) Practical forms of any of the official cotton standards of the United States enumerated in this paragraph, each certified under the seal of the United States Department of Agriculture and under the signature of the Secretary, thereto affixed by himself or by some other official or employee of the Department thereunto duly authorized by him, and in the case of the standards for grade and color accompanied by photographs representing the cotton in such practical forms on the date of certification, will be furnished to any person requesting the same, upon prepayment of the cost thereof as determined by the Secretary, subject to the other conditions of this section.

Standards for grades of American upland cotton as revised effective August 20, 1936, as follows:

- No. 2, or Strict Good Middling.
- No. 3, or Good Middling.
- No. 4, or Strict Middling.
- No. 5, or Middling.
- No. 6, or Strict Low Middling.
- No. 7, or Low Middling.
- No. 8, or Strict Good Ordinary.
- No. 9, or Good Ordinary.
- No. 3, Tinged, or Good Middling Tinged.
- No. 4, Tinged, or Strict Middling Tinged.
- No. 5, Tinged, or Middling Tinged.
- No. 6, Tinged, or Strict Low Middling Tinged.
- No. 7, Tinged, or Low Middling Tinged.

Standards for grades and colors of American-Egyptian cotton, as follows:

- | | | |
|--------------|--------------|--------------|
| Grade No. 1. | Grade No. 3. | Grade No. 5. |
| Grade No. 2. | Grade No. 4. | |

Standards for length of staple, as follows:

AMERICAN UPLAND COTTON

$\frac{3}{4}$ inch	$1\frac{1}{32}$ inches	$1\frac{1}{4}$ inches
$\frac{13}{16}$ inch	$1\frac{1}{16}$ inches	$1\frac{9}{32}$ inches
$\frac{7}{8}$ inch	$\frac{13}{32}$ inches	$1\frac{5}{16}$ inches
$\frac{29}{32}$ inch	$1\frac{1}{8}$ inches	$1\frac{11}{32}$ inches
$1\frac{15}{16}$ inch	$1\frac{5}{32}$ inches	$1\frac{3}{8}$ inches
$1\frac{31}{32}$ inch	$1\frac{3}{16}$ inches	$1\frac{1}{2}$ inches
1 inch	$1\frac{7}{32}$ inches	

AMERICAN-EGYPTIAN COTTON

$1\frac{1}{2}$ inches
 $1\frac{9}{16}$ inches

$1\frac{5}{8}$ inches

$1\frac{3}{4}$ inches

(b) Each application for practical forms of the official cotton standards shall be upon a blank furnished or approved by the Bureau, shall be signed by the applicant, shall be accompanied by certified check, draft, post-office money order, or express money order, payable to the "United States Department of Agriculture", in an amount sufficient to cover the cost of the forms requested, and shall incorporate the following conditions:

(1) That no practical form of any of the official cotton standards shall be considered or used as representing the official cotton standards of the United States after the date of its cancelation in accordance with this section or, in any event, after the expiration of 18 months following the date of its certification (except that sets of practical forms stored, protected, and preserved in accordance with certain agreements for the adoption of universal standards, may be used for such periods as may be prescribed in such agreements).

(2) That said practical forms and the photographs accompanying them shall be subject to inspection on any business day, between the hours of 9 a. m. and 4 p. m., by the Secretary or by an officer or agent of the Department of Agriculture authorized by the Chief of the Bureau.

(3) That the signature of the Secretary certifying to any practical forms, or any photograph of any type or sample of said practical forms accompanying the same, or both, may be canceled if it be found, upon such inspection, either that any of said forms for any reason misrepresents the official cotton standards or that any such photograph has been altered or mutilated.*† [Reg. 15, sec. 1]

27.104 Fees; practical forms; cotton standards. (a) The cost of any of the practical forms of the universal standards or other official cotton standards of the United States for grade or color, enumerated in § 27.103, shall be at the rate of \$5 each, f. o. b., Washington, D. C., for shipments within the continental United States, and \$6.25 each, delivered to destination, for shipments outside the continental United States.

(b) The costs specified in paragraph (a) of this section shall likewise apply in cases where new samples are furnished in replacement of old samples in any box of the practical forms returned to the Department for the purpose, except that when the number of new samples so furnished is five or less in one box, the cost shall be at the rate of 40 cents for each sample.

(c) The cost of any of the practical forms of the official cotton standards of the United States for length of staple enumerated in § 27.103 shall be at the rate of \$1 each, f. o. b., Washington, D. C., for shipments within the continental United States, and \$1.25 each, delivered to destination, for shipments outside the continental United States.*† [Reg. 15, sec. 2]

27.105 Fees; method of payment. Any payment or advance deposit under §§ 27.104–27.106 shall be by certified check or by draft or

*†For statutory and source citations, see note to § 27.1.

post-office or express money order, payable to the order of "United States Department of Agriculture", and may not be made in cash except in cases where the total payment or deposit does not exceed \$1.*† [Reg. 15, sec. 3]

27.106 Fees; later cotton standards. The cost of practical forms of the universal standards or other official cotton standards which may hereafter be established shall be such as the Secretary of Agriculture may determine.*† [Reg. 15, sec. 4]

PUBLICATIONS

27.107 Information and investigations. Information as to official cotton standards and investigation under the Act shall be published from time to time.*† [Reg. 16, sec. 1]

SUBPART—OFFICIAL COTTON STANDARDS OF THE UNITED STATES FOR THE GRADE OF AMERICAN UPLAND COTTON

27.151 White cotton—(a) No. 1 (or Middling Fair). No. 1 or Middling Fair shall be American upland cotton which in color, leaf, and preparation is better than No. 2 or Strict Good Middling.

(b) No. 2 (or Strict Good Middling). No. 2 or Strict Good Middling shall be American upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American Upland, No. 2 or Strict Good Middling, effective August 20, 1936."

(c) No. 3 (or Good Middling). No. 3 or Good Middling shall be American upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American Upland, No. 3 or Good Middling, effective August 20, 1936."

(d) No. 4 (or Strict Middling). No. 4 or Strict Middling shall be American upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American Upland, No. 4 or Strict Middling, effective August 20, 1936."

(e) No. 5 (or Middling). No. 5 or Middling shall be American upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American Upland, No. 5 or Middling, effective August 20, 1936."

(f) No. 6 (or Strict Low Middling). No. 6 or Strict Low Middling shall be American upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in

the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American Upland, No. 6 or Strict Low Middling, effective August 20, 1936."

(g) No. 7 (or Low Middling). No. 7 or Low Middling shall be American upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American Upland, No. 7 or Low Middling, effective August 20, 1936."

(h) No. 8 (or Strict Good Ordinary). No. 8 or Strict Good Ordinary shall be American upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American Upland, No. 8 or Strict Good Ordinary, effective August 20, 1936."

(i) No. 9 (or Good Ordinary). No. 9 or Good Ordinary shall be American upland cotton which in color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American Upland, No. 9 or Good Ordinary, effective August 20, 1936."*† [p. 7]

†The source of §§ 27.151–27.157, inclusive, is Revision of standards for grades of American Upland cotton, Department of Agriculture, Mar. 1936, effective Aug. 20, 1936. (SRA, BAE 150, pp. 7–9)

27.152 Extra White cotton—(a) No. 3 Extra White (or Good Middling Extra White). No. 3 Extra White or Good Middling Extra White shall be American upland cotton which in leaf and preparation is No. 3 or Good Middling, but which is whiter than No. 3 or Good Middling.

(b) No. 4 Extra White (or Strict Middling Extra White). No. 4 Extra White or Strict Middling Extra White shall be American upland cotton which in leaf and preparation is No. 4 or Strict Middling, but which is whiter than No. 4 or Strict Middling.

(c) No. 5 Extra White (or Middling Extra White). No. 5 Extra White or Middling Extra White shall be American upland cotton which in leaf and preparation is No. 5 or Middling, but which is whiter than No. 5 or Middling.

(d) No. 6 Extra White (or Strict Low Middling Extra White). No. 6 Extra White or Strict Low Middling Extra White shall be American upland cotton which in leaf and preparation is No. 6 or Strict Low Middling, but which is whiter than No. 6 or Strict Low Middling.

(e) No. 7 Extra White (or Low Middling Extra White). No. 7 Extra White or Low Middling Extra White shall be American upland cotton which in leaf and preparation is No. 7 or Low Middling, but which is whiter than No. 7 or Low Middling.

*For statutory citation, see note to § 27.1.

†For source citation, see note to § 27.151.

(f) No. 8 Extra White (or Strict Good Ordinary Extra White). No. 8 Extra White or Strict Good Ordinary Extra White shall be American upland cotton which in leaf and preparation is No. 8 or Strict Good Ordinary, but which is whiter than No. 8 or Strict Good Ordinary.

(g) No. 9 Extra White (or Good Ordinary Extra White). No. 9 Extra White or Good Ordinary Extra White shall be American upland cotton which in leaf and preparation is No. 9 or Good Ordinary, but which is whiter than No. 9 or Good Ordinary.*† [pp. 7–8]

27.153 Tinged Cotton—(a) No. 3 Tinged (or Good Middling Tinged). No. 3 Tinged or Good Middling Tinged shall be American upland cotton which in leaf and preparation is No. 3 or Good Middling, but which in color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Cotton Standards of the United States, American Upland, No. 3 Tinged or Good Middling Tinged, effective August 20, 1936.”

(b) No. 4 Tinged (or Strict Middling Tinged). No. 4 Tinged or Strict Middling Tinged shall be American upland cotton which in leaf and preparation is No. 4 or Strict Middling, but which in color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Cotton Standards of the United States, American Upland, No. 4 Tinged or Strict Middling Tinged, effective August 20, 1936.”

(c) No. 5 Tinged (or Middling Tinged). No. 5 Tinged or Middling Tinged shall be American upland cotton which in leaf and preparation is No. 5 or Middling, but which in color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Cotton Standards of the United States, American Upland, No. 5 Tinged or Middling Tinged, effective August 20, 1936.”

(d) No. 6 Tinged (or Strict Low Middling Tinged). No. 6 Tinged or Strict Low Middling Tinged shall be American upland cotton which in leaf and preparation is No. 6 or Strict Low Middling, but which in color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Cotton Standards of the United States, American Upland, No. 6 Tinged or Strict Low Middling Tinged, effective August 20, 1936.”

(e) No. 7 Tinged (or Low Middling Tinged). No. 7 Tinged or Low Middling Tinged shall be American upland cotton which in leaf and preparation is No. 7 or Low Middling, but which in color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Cotton Standards of the United States, American Upland, No. 7 Tinged or Low Middling Tinged, effective August 20, 1936.”*† [p. 8]

27.154 Spotted cotton—(a) No. 3 Spotted (or Good Middling Spotted). No. 3 Spotted or Good Middling Spotted shall be American upland cotton which in leaf and preparation is No. 3 or Good Middling, but which in color is between No. 3 or Good Middling and No. 3 Tinged or Good Middling Tinged.

(b) No. 4 Spotted (or Strict Middling Spotted). No. 4 Spotted or Strict Middling Spotted shall be American upland cotton which in leaf and preparation is No. 4 or Strict Middling, but which in color is between No. 4 or Strict Middling and No. 4 Tinged or Strict Middling Tinged.

(c) No. 5 Spotted (or Middling Spotted). No. 5 Spotted or Middling Spotted shall be American upland cotton which in leaf and preparation is No. 5 or Middling, but which in color is between No. 5 or Middling and No. 5 Tinged or Middling Tinged.

(d) No. 6 Spotted (or Strict Low Middling Spotted). No. 6 Spotted or Strict Low Middling Spotted shall be American upland cotton which in leaf and preparation is No. 6 or Strict Low Middling, but which in color is between No. 6 or Strict Low Middling and No. 6 Tinged or Strict Low Middling Tinged.

(e) No. 7 Spotted (or Low Middling Spotted). No. 7 Spotted or Low Middling Spotted shall be American upland cotton which in leaf and preparation is No. 7 or Low Middling, but which in color is between No. 7 or Low Middling and No. 7 Tinged or Low Middling Tinged.*† [pp. 8–9]

27.155 Yellow Stained cotton—(a) No. 3 Yellow Stained (or Good Middling Yellow Stained). No. 3 Yellow Stained or Good Middling Yellow Stained shall be American upland cotton which in leaf and preparation is No. 3 or Good Middling, but which in color is deeper than No. 3 Tinged or Good Middling Tinged.

(b) No. 4 Yellow Stained (or Strict Middling Yellow Stained). No. 4 Yellow Stained or Strict Middling Yellow Stained shall be American upland cotton which in leaf and preparation is No. 4 or Strict Middling, but which in color is deeper than No. 4 Tinged or Strict Middling Tinged.

(c) No. 5 Yellow Stained (or Middling Yellow Stained). No. 5 Yellow Stained or Middling Yellow Stained shall be American upland cotton which in leaf and preparation is No. 5 or Middling, but which in color is deeper than No. 5 Tinged or Middling Tinged.*† [p. 9]

27.156 Gray cotton—(a) No. 3 Gray (or Good Middling Gray). No. 3 Gray or Good Middling Gray shall be American upland cotton which in leaf and preparation is No. 3 or Good Middling, but which is more gray in color than No. 3 or Good Middling and no darker in color than the duldest bale in No. 6 or Strict Low Middling.

(b) No. 4 Gray (or Strict Middling Gray). No. 4 Gray or Strict Middling Gray shall be American upland cotton which in leaf and preparation is No. 4 or Strict Middling, but which is more gray in color than No. 4 or Strict Middling and no darker in color than the duldest bale in No. 7 or Low Middling.

*For statutory citation, see note to § 27.1.

†For source citation, see note to § 27.151.

(c) **No. 5 Gray (or Middling Gray).** No. 5 Gray or Middling Gray shall be American upland cotton which in leaf and preparation is No. 5 or Middling, but which is more gray in color than No. 5 or Middling and no darker in color than the dullest bale in No. 8 or Strict Good Ordinary.*† [p. 9]

27.157 General. American upland cotton which in color, leaf, and preparation is within the range of the standards established by §§ 27.151–27.156, but which contains a combination of color, leaf, and preparation not within any one of the definitions therein set out, shall be designated according to the definition which is equivalent to, or if there be no exact equivalent is next below, the average of all the factors that determine the grade of the cotton: Provided, That in no event shall the grade assigned to any cotton or sample be more than one grade higher than the grade classification of the color or leaf contained therein.

Effective August 20, 1936, this shall supersede the public notice of July 30, 1923, establishing official cotton standards of the United States for grades and colors of American upland cotton and the public notice of the Secretary of Agriculture dated August 10, 1932, establishing official cotton standards of the United States for Extra White cotton.*† [p. 9]

SUBPART—OFFICIAL COTTON STANDARDS OF THE UNITED STATES FOR LENGTH OF STAPLE

27.201 Measurement; humidity; temperature. The length of staple of any cotton shall be the normal length by measurement, without regard to quality or value, of a typical portion of its fibers under a relative humidity of the atmosphere of 65 percent and a temperature of 70° F.* [Sec. 1, Public Notice, Oct. 25, 1918, SRA, BAE 117, p. 15]

27.202 Terms of designation. The length of staple of any cotton shall be designated by that one of the following terms which expresses its measurement in inches and fractions of an inch in accordance with § 27.201:

“Below $\frac{3}{4}$; $\frac{3}{4}$; $\frac{13}{16}$; $\frac{7}{8}$; $\frac{29}{32}$; $\frac{15}{16}$; $\frac{31}{32}$; 1; $1\frac{1}{32}$; $1\frac{1}{16}$; $1\frac{3}{32}$; $1\frac{1}{8}$; $1\frac{5}{32}$; $1\frac{3}{16}$; $1\frac{7}{32}$; $1\frac{1}{4}$; $1\frac{9}{32}$; $1\frac{5}{16}$; $1\frac{11}{32}$; $1\frac{3}{8}$; $1\frac{13}{32}$; $1\frac{7}{16}$; $1\frac{15}{32}$; $1\frac{1}{2}$; $1\frac{17}{32}$; $1\frac{9}{16}$; $1\frac{19}{32}$; $1\frac{5}{8}$; $1\frac{21}{32}$; $1\frac{11}{16}$; $1\frac{23}{32}$; $1\frac{3}{4}$; and upward in like manner in gradations of thirty-seconds, disregarding any fraction less than a thirty-second.” * [Sec. 2, Public Notice, Oct. 25, 1918, as amended Nov. 16, 1928, SRA, BAE 117, p. 15]

27.203 Original representation of staple lengths. The lengths of staple designated as $\frac{3}{4}$, $\frac{7}{8}$, $\frac{15}{16}$, 1, $1\frac{1}{32}$, $1\frac{1}{16}$, $1\frac{3}{32}$, $1\frac{1}{8}$, $1\frac{5}{32}$, $1\frac{3}{16}$, $1\frac{7}{32}$, $1\frac{1}{4}$, $1\frac{9}{32}$, $1\frac{5}{16}$, $1\frac{11}{32}$, $1\frac{3}{8}$, and $1\frac{1}{2}$ inches, respectively, are each represented by a quantity of American upland cotton suitably contained and marked “Original Representation of Official Cotton Standards of the United States (American Upland) Length of Staple”, followed in each instance by the appropriate designation of staple length and the effective date, August 1, 1929; each of the lengths of

staple designated as $1\frac{3}{16}$, $2\frac{9}{32}$, and $3\frac{1}{32}$ inches by a quantity of American Upland cotton similarly marked and followed in each instance by the appropriate designation of staple length and the effective date, August 1, 1933; and each of the lengths of staple designated as $1\frac{1}{2}$, $1\frac{9}{16}$, $1\frac{5}{8}$, and $1\frac{3}{4}$ inches by a quantity of American-Egyptian cotton suitably contained and marked "Original Representation of Official Cotton Standards of the United States (American-Egyptian) Length of Staple", followed in each instance by the appropriate designation of staple length and the effective date, August 1, 1929. Said quantities of cotton are to be kept in the custody of the United States Department of Agriculture.* [Sec. 3, Public Notice as amended Mar. 5, 1928, SRA, BAE 117, p. 15, and as amended July 30, 1932]

27.204 Over $\frac{3}{4}$ -inch staple. Cotton which is more than three-fourths of an inch in length of staple, but is not exactly one of the measurements specified in § 27.202, shall be designated by that one of such measurements which comes nearest under its true measurement.* [Sec. 4, Public Notice, Oct. 25, 1918, SRA, BAE 117, p. 15]

27.205 Bale of different staple lengths. Whenever the length of staple of cotton taken from one part of a bale is different from that taken from another part of the same bale, the length of staple of the cotton in such bale shall be that of the part which is the shorter.* [Sec. 5, Public Notice, Oct. 25, 1918, SRA, BAE 117, p. 15]

SUBPART—OFFICIAL COTTON STANDARDS OF THE UNITED STATES FOR GRADES AND COLORS OF AMERICAN-EGYPTIAN COTTON

27.251 Grade No. 1. Grade No. 1 shall be American-Egyptian cotton which in grade and color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American-Egyptian Grade No. 1, effective August 1, 1930."*† [Sec. 1]

†The source of §§ 27.251 to 27.262, inclusive, (except for the amendment noted in the text,) is Proceedings of International Universal Cotton Standards Conference of 1929 and items relating to the administration of the United States Futures and Cotton Standards Acts, Department of Agriculture, Apr. 10, 1929. (SRA, BAE 117, pp. 11-12)

27.252 Grade No. 2. Grade No. 2 shall be American-Egyptian cotton which in grade and color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American-Egyptian, Grade No. 2, effective August 1, 1930."*† [Sec. 2]

27.253 Grade No. 3. Grade No. 3 shall be American-Egyptian cotton which in grade and color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American-Egyptian, Grade No. 3, effective August 1, 1930."*† [Sec. 3]

*For statutory citation, see note to § 27.1.

†For source citation, see note to § 27.251.

27.254 Grade No. 4. Grade No. 4 shall be American-Egyptian cotton which in grade and color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American-Egyptian, Grade No. 4, effective August 1, 1930."*† [Sec. 4]

27.255 Grade No. 5. Grade No. 5 shall be American-Egyptian cotton which in grade and color is within the range represented by a set of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Cotton Standards of the United States, American-Egyptian, Grade No. 5, effective August 1, 1930."*† [Sec. 5]

27.256 Intermediate grades. American-Egyptian cotton which in grade and/or color is between any two adjacent grades described in §§ 27.251–27.255 shall be designated by the word "grade" and the grade number of the higher of such two grades followed by the fraction " $\frac{1}{2}$ ".*† [Sec. 5–A, Public Notice, as added July 3, 1930]

27.257 Below grade No. 5. American-Egyptian cotton which in grade and/or color is inferior to grade No. 5 shall be designated "Below grade No. 5"*† [Sec. 6]

27.258 Extraneous matter. American-Egyptian cotton containing cracked seeds, seed kernels, sand, or other extraneous matter shall be graded as if it contained an equivalent of leaf and trash as represented in the respective grades described in §§ 27.251–27.258.*† [Sec. 7]

27.259 Repacked. American-Egyptian cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots, collected and rebaled, shall, in addition to its grade, be designated "Repacked."*† [Sec. 8]

27.260 False packed. American-Egyptian cotton in a bale (a) containing substances entirely foreign to cotton; (b) containing damaged cotton in the interior, with or without any indication of such damage upon the exterior; (c) composed of good cotton upon the exterior and exceedingly inferior cotton in the interior in such manner as not to be detected by customary examination; that is, a plated bale; or (d) containing pickings or linters worked into the bale, shall, in addition to its grade, be designated "False packed."*† [Sec. 9]

27.261 Mixed packed. American-Egyptian cotton in a bale which shows a difference of more than two grades between samples drawn from the heads and the top and bottom sides of the bale, or which shows a difference in color between such samples exceeding two grades, shall, in addition to its lowest grade, be designated "Mixed packed."*† [Sec. 10]

27.262 Water packed. American-Egyptian cotton in a bale that has been penetrated by water during the baling process, causing damage to the fibers, or a bale that, through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior, shall, in addition to its grade, be designated "Water packed."*† [Sec. 11]

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CROSS REFERENCES

Cotton classification under the United States Cotton Futures Act: See Part 27.
Cotton warehouse regulations: See Part 101.

SUBPART—REGULATIONS

DEFINITIONS

Section 28.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 28.1 to 28.304, inclusive, issued under the authority contained in secs. 6, 10, 42 Stat. 1518, 1519; 7 U.S.C. 56, 61.

†The source of §§ 28.1 to 28.149, inclusive, is Regulations of the Secretary of Agriculture under the United States Cotton Standards Act, July 6, 1936, effective Aug. 20, 1936, 1 F.R. 1187. (SRA, BAE 153)

28.2 Terms defined. As used throughout this subpart, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) **The Act.** The United States Cotton Standards Act, approved March 4, 1923 (42 Stat. 1518; 7 U.S.C. 51–65), with such amendments as such by the Chief of the Bureau.

(b) **Exchange.** Exchange, board of trade, association, or similar institution or place of business, recognized as such by the Secretary.

(c) **Custodian.** Person who has possession or control of cotton or of samples, as agent, controller, broker, or factor, as the case may be.

(d) **Person.** Individual, association, partnership, or corporation, or two or more individuals having a joint or common interest.

(e) **Owner.** Person who through financial interest, owns, controls, or has the disposition either of cotton or of samples.

(f) **Bureau.** Bureau of Agricultural Economics of the United States Department of Agriculture.

(g) **Exchange inspection bureau.** The inspection bureau of any exchange which may have an organized inspection bureau recognized as such by the Chief of the Bureau.

(h) **Board.** Board of cotton examiners.

(i) **Official cotton standards.** Official cotton standards of the United States for the grade of American upland cotton and for American-Egyptian cotton, and for length of staple, adopted by or established pursuant to the Act, or any change or replacement thereof.

(j) **Universal standards.** The official cotton standards of the United States for the grade of American Upland cotton.

(k) **Upland cotton.** All cotton grown anywhere within the continental United States, including the growths sometimes referred to as upland, Gulf, and Texas cotton, but excluding the sea-island and American-Egyptian varieties.

(l) **Supervisor of inspection.** An officer of the Department of Agriculture designated as such by the Chief of the Bureau or by the chairman of a board of examiners.

(m) **Secretary.** The Secretary of Agriculture of the United States.

(n) **Regulations.** Regulations made under the Act by the Secretary.

(o) **License.** A license issued under the Act by the Secretary.

(p) **Licensed classifier.** A person licensed under the Act by the Secretary to classify cotton according to the official cotton standards of the United States and to certificate the classification of the same.

(q) **Licensed sampler.** A person licensed by the Secretary to sample cotton.

(r) **State.** A State, Territory, or district of the United States.

(s) **Cotton examiner.** An officer of the Department of Agriculture so designated by the Chief of the Bureau.

(t) **Dispute.** A disagreement between the parties as to the true classification of any cotton not tendered for delivery on a contract under the United States Cotton Futures Act (39 Stat. 476; 26 U.S.C. Chapter 14) or as to its relative classification when compared with a type or other samples.

(u) **Party.** A party to a dispute.

(v) **Cotton.** The word "cotton" as used in the Act means cotton of any variety produced within the continental United States, including linters. In this subpart, for administrative convenience, the word "cotton" is used to signify vegetable hair removed from cottonseed in the usual process of ginning, and the word "linters" as defined in the following paragraph.

(w) **Linters.** Vegetable hair removed from cottonseed subsequent to the usual process of ginning.*† [Reg. 1, sec. 2]

ADMINISTRATIVE AND GENERAL

28.3 Chief of Bureau. The Chief of the Bureau is charged with the supervision on behalf of the United States Department of Agriculture of the performance of all duties arising in the administration of the Act.*† [Reg. 2, sec. 1]

28.4 Boards of cotton examiners. There shall be maintained at New Orleans, La., Houston and Galveston, Tex., Mobile, Ala., Savannah, Ga., Charleston, S. C., and when necessary in the opinion of the Chief of the Bureau, at any other point that he shall designate for the purpose, a board of cotton examiners. A board of supervising cotton examiners shall be constituted for duty as assigned; and an Appeal Board of Review Examiners shall be constituted to which may be referred requests for the review of the classification and/or comparison of cotton performed by other boards appointed in accordance with this section. The Appeal Board of Review Examiners shall be located at Washington, D. C., except when the Chief of the Bureau shall require that committees of the board meet to perform its functions elsewhere. The members of all boards and the chairman of each shall be designated for the purpose by the Chief of the Bureau.*† [Reg. 2, sec. 2]

28.5 Secretary, board of cotton examiners. The Chief of the Bureau shall designate a secretary for each board. It shall be the duty of the secretary of the board to receive all correspondence relating to the classification of cotton under the Act and to see that all samples are prepared for classification and/or comparison in such manner that the name of the owner and/or the custodian shall be unknown to the members of the board, who are detailed to classify or compare the cotton, until after the samples are classified.*† [Reg. 2, sec. 3]

28.6 Acting secretary of board. In the event of the absence or incapacity of the secretary of the board, the chairman of the board shall designate temporarily an acting secretary of the board in his stead. Any person thus designated shall be thereby disqualified to act as a member of the board in the classification of cotton during the term of such temporary appointment.*† [Reg. 2, sec. 4]

28.7 Supervisor of cotton inspection. The Chief of the Bureau whenever he deems necessary may designate an officer of the Department of Agriculture as supervisor of cotton inspection, who shall supervise the inspection and sampling of cotton and perform such other duties as may be required of him in administering the Act and the regulations in this subpart. The secretary of the board may or may not be a supervisor of inspection.*† [Reg. 2, sec. 5]

28.8 Chairman of board; responsibility. Subject to this subpart and the instruction of the Chief of the Bureau, the chairman of each board shall be responsible for the proper performance of the duties imposed on such board and on the persons connected therewith.*† [Reg. 2, sec. 6]

28.9 Classification of cotton; determination. For the purposes of the Act, the classification and comparison of any cotton, samples, or types submitted to the Department of Agriculture shall be determined or made only by cotton examiners properly qualified and designated as such by the Chief of the Bureau, and the certificate of a board of cotton examiners with respect to any cotton shall be deemed to be the certificate of the Department of Agriculture.*† [Reg. 2, sec. 7]

*†For statutory and source citations, see note to § 28.1.

28.10 Inspection; sampling; classification. The inspection, sampling, and classification of cotton in the United States pursuant to the Act shall be performed as prescribed in §§ 28.12–28.135, and the inspection, sampling, and classification of linters as prescribed in §§ 28.136–28.146.*† [Reg. 2, sec. 8]

28.11 Cotton examiners on foreign exchanges. Whenever any association or exchange in any other country than the United States shall adopt the universal standards and establish them as the basis of all transactions and contracts for American upland cotton, made and executed according to its rules, the Chief of the Bureau may appoint certain members or officials of such exchanges as cotton examiners. Insofar as the administration of the Act applies to cotton involved in contracts made in accordance with the rules of such exchange, the administration shall be as prescribed in §§ 28.147, 28.148.*† [Reg. 2, sec. 9]

REQUESTS FOR CLASSIFICATION AND COMPARISON

28.12 Classification and comparison; requests. For each lot or mark of cotton which the applicant desires classified or compared separately he shall make a separate written request specifying which one of the following three forms of service is desired:

(a) **Form A determination.** The informal classification or comparison, or both, of samples submitted for the purpose. Such informal classification or comparison shall be evidenced by a Form A memorandum which shall not be subject to review or appeal.

(b) **Form B determination.** The formal classification or comparison, or both, of samples submitted by mutual agreement of two or more parties to a dispute. The classification or comparison in such cases shall be evidenced by a Form B certificate which shall be subject to appeal as provided in § 28.61.

(c) **Form C determination.** The formal classification of bales of cotton, to be sampled under the supervision of a supervisor of inspection. The classification in such cases shall be evidenced by a Form C certificate which shall be subject to review as provided in §§ 28.58–28.69.*† [Reg. 3, sec. 1]

28.13 Form of request. Requests for classification or comparison made in accordance with § 28.12 shall contain such information as the Chief of the Bureau may require.*† [Reg. 3, sec. 2]

28.14 Disputes; nature of stipulation required. (a) In cases of dispute, in which Form B determinations are requested, it may be required that the request be accompanied by a stipulation signed by the parties or by their agents and dated, and containing the following information:

(1) The names and post-office addresses of the parties, or their agents, if any, signing the stipulation.

(2) The exchange, association, or other body, if any, under whose rules the contract was made.

(3) The interests of the parties in such contract.

(4) The respective claims of each party as to the quality or grade or length of staple of each bale or other package of cotton involved in the dispute, and the facts material thereto.

(5) The marks identifying each bale or other package of cotton in dispute.

(6) The place or places where it is located.

(7) That the parties have agreed upon samples to be submitted.

(b) In the adjustment of disputes, or when otherwise necessary, the Bureau shall observe the definitions of terms laid down in the rules or regulations of the exchange or other body under which the contract was made, except that when two grades are used to describe a single lot of cotton without reference to the proportions of each, unless a different meaning be evident from the language of the contract or the rules under which it was made, the description shall be construed to mean that no bale in the lot is intended to be below the lower or above the higher grade of the description. The same principle shall be observed when two staple lengths not expressed in millimeters are similarly employed in a single description.

(c) No dispute under this section shall be entertained with respect to cotton tendered for delivery on a contract under the United States Cotton Futures Act (39 Stat. 476; 26 U.S.C. Chapter 14), or with respect to which a Form C certificate has previously been issued.*† [Reg. 3, sec. 3]

28.15 Filing of requests for classification. All requests for classification or comparison in the United States leading to Form A memoranda and Form B certificates shall be filed with the secretary of the board of cotton examiners or with the supervisor of inspection at the place where the cotton is located. If there is no board at that point and no supervisor of inspection is stationed there, requests may be filed with the secretary of the board of examiners at the nearest convenient point: Provided, That requests for classification or comparison leading to Form A memoranda and Form B certificates may, where desired, be filed directly with the Appeal Board of Review Examiners at Washington, D. C. Provided further, That whenever the Chief of the Bureau shall find it to be expedient, samples submitted for classification, together with the accompanying request, may be transferred to another board for classification.*† [Reg. 3, sec. 4]

28.16 Same. Requests for classification leading to Form C certificates covering the grade and the staple length of the cotton involved shall be filed with the secretary of the board of examiners at the place where the cotton is located or, in case there is no board at that point, with the supervisor of inspection.*† [Reg. 3, sec. 5]

28.17 Limitation on filing of request. No request shall be filed for a determination of the classification of any cotton described by terms of which the word "millimeter" is a part.*† [Reg. 3, sec. 6]

28.18 One request only for classification. Not more than one request for the informal classification of the same cotton shall be filed unless each subsequent request shall be accompanied by redrawn samples.*† [Reg. 3, sec. 7]

*†For statutory and source citations, see note to § 28.1.

28.19 Withdrawal or rejection of classification request. Any classification request may be withdrawn by the applicant at any time before the classification of the cotton covered thereby, subject to the payment of such fees, if any, as may be prescribed in §§ 28.118–28.135. Any classification request may be rejected by the chairman of the board or the Chief of the Bureau for noncompliance with the Act or this subpart.*† [Reg. 3, sec. 8]

SUBMISSION AND DISPOSITION OF SAMPLES FOR FORM A AND FORM B
DETERMINATIONS

28.20 Submission of samples. Samples of cotton submitted to a board of cotton examiners for classification and/or comparison shall be drawn from both sides of the bale and shall be delivered to the secretary of the board with which the request was filed, as soon as possible after the filing of such request. All transportation charges incident to the submission of samples shall be prepaid by the party making the request or by his agent.*† [Reg. 4, sec. 1]

28.21 Preparation of samples. All such samples shall be inclosed in one or more wrappers, which shall be labeled or marked, or both, in such manner as to show the name and address of the owner, the lot number or marks, if any, the number of bales represented by the samples contained in each wrapper, and such other information as may be necessary in accordance with the instructions of the chairman of the board or of the Chief of the Bureau. Each sample of sandy or dusty cotton shall be inclosed in a separate wrapper.*† [Reg. 4, sec. 2]

28.22 Lost or damaged samples. If any samples are lost, damaged, or mutilated, or are received in packages arriving in a condition which may be considered to alter the representative character of the sample, the secretary of the board shall note all the facts, including the number of missing samples and the tag numbers identifying the samples received, and shall so inform the person who made the request. The classification or comparison of such samples shall be deferred until the person making the request shall advise in writing whether he wishes the classification or comparison made at once or delayed until he substitutes other samples. If the samples are submitted for purposes of adjusting a dispute, both parties shall be given identical information as to the condition in which the samples arrived, and the approval of both parties of the use of the damaged samples or of the redrawn samples shall be required before the classification shall proceed.*† [Reg. 4, sec. 3]

28.23 Disposal of samples. When so stipulated in the classification request, samples submitted for informal classification shall be returned to the person making the request at his expense at the time the certificate is issued or when the request for classification is withdrawn or rejected; otherwise, such samples shall be disposed of in accordance with § 28.25.*† [Reg. 4, sec. 4]

28.24 Custody of samples. Samples of cotton submitted for classification and/or comparison in the adjustment of a dispute shall remain in the possession of the secretary of the board to which they are delivered until the expiration of the time permitted for request-

ing a review as provided in §§ 28.58–28.69, or, if a review is requested, until the classification has been reviewed. If so requested by the party who submitted the samples for original classification, the samples shall be returned to him or to any person whom he may designate at the end of such time or after such review, as the case may be; otherwise, they shall be disposed of as provided in § 28.25.*† [Reg. 4, sec. 5]

28.25 Samples not removed, property of Department of Agriculture. Samples not removed in accordance with this subpart and loose cotton separated from the samples in the handling and classification thereof by a board shall become the property of the Department of Agriculture. Such cotton shall be disposed of in the manner prescribed for other property by the property regulations of the Department of Agriculture, but the proceeds thereof shall be deemed to be part of the costs of classification pursuant to the regulations in this subpart. Such proceeds shall be deposited with other moneys received in payment of costs to the credit of the fund provided in section 5 of the Act (42 Stat. 1518; 7 U.S.C. 55).*† [Reg. 4, sec. 6]

SUBMISSION OF COTTON, SUPERVISION AND SAMPLING, IN FORM C DETERMINATIONS

28.26 Cotton; method of submitting to Secretary. All bales of cotton submitted to the Secretary or to his duly authorized representatives for the purpose of classification or certification, in accordance with section 4 of the Act (42 Stat. 1517; 7 U.S.C. 54), shall, except as otherwise provided in this subpart for the informal classification of samples or the adjustment of disputes, be submitted in accordance with §§ 28.26–28.37.*† [Reg. 5, sec. 1]

28.27 Storage of cotton submitted; statement of withdrawal. All cotton submitted in accordance with §§ 28.26–28.37 shall be stored in storage places approved by the Chief of the Bureau and shall be sampled by or under the direction of an exchange inspection bureau, subject to the provisions of §§ 28.28–28.33. The exchange inspection bureau shall furnish to the board which classified such cotton, on the first business day of each week, a written statement of all certificated cotton withdrawn from storage, or the lot number of cotton the identification of which has been changed, or which has otherwise been removed from the supervision or control of such exchange inspection bureau, during the next preceding week. Such statement shall show each lot number, and if changed, the new lot number, and in case of the withdrawal or removal of a portion only of the lot, the tag numbers of the bales so withdrawn or removed. If such removal be to a different place of storage under the supervision or control of the exchange inspection bureau, the statement shall show the new location.*† [Reg. 5, sec. 2]

28.28 Supervision of inspection and sampling. The inspection and sampling of cotton of which classification is desired shall be subject to the supervision and in accordance with the instructions of a supervisor of cotton inspection.*† [Reg. 5, sec. 3]

*†For statutory and source citations, see note to § 28.1.

28.29 Cotton to be made available to supervisor. The owner or custodian of the cotton shall cause the cotton to be made available to such supervisor for such examination as may be necessary for the purposes of its classification, and shall take such steps as may be necessary to secure its proper inspection and sampling and the proper preparation and delivery of representative samples thereof at the place designated therefor, in accordance with this subpart, without expense to the Department of Agriculture.*† [Reg. 5, sec. 4]

28.30 Employees in inspection; sampling. No person shall, after notice by the Chief of the Bureau, be employed in any way in connection with any phase of the inspection and sampling of cotton, or the preparation of the samples thereof, for the purposes of classification under this subpart, who for good cause is disapproved by the Chief of the Bureau.*† [Reg. 5, sec. 5]

28.31 Samples; drawing; weight; representative. One sample shall be drawn from the top side of each bale and one from the bottom side. Each such sample shall weigh not less than 3 ounces. The head of the bale shall be properly inspected, and any conditions not fully indicated by the samples shall be specified by the inspector or the sampler of the cotton in a written memorandum to the board, which shall accompany the samples. Each such sample shall be considered representative of the bale for a period not exceeding 2 years from the date of the issuance of a Form C certificate therefor under §§ 28.51–28.57.*† [Reg. 5, sec. 6]

28.32 Additional samples. In addition to the samples hereinbefore prescribed, separate samples, if desired, may be drawn and furnished to the owner or custodian of the cotton.*† [Reg. 5, sec. 7]

28.33 Handling of samples. All persons in any way connected with the inspection and sampling and handling of samples of cotton for the purpose of classification, pursuant to the regulations in this subpart, shall carefully handle them in such manner as not to cause loss of sand therefrom or any change otherwise in their representative character.*† [Reg. 5, sec. 8]

28.34 Rejection of samples; new samples. Any sample or set of samples which does not meet the requirements of this subpart or which does not correctly represent the bale or bales from which drawn may be rejected by a supervisor of cotton inspection or the secretary or chairman of the board. Whenever the supervisor of cotton inspection or the chairman of the board shall find it necessary, in order to determine the true classification of any bale, such bale shall be reinspected and, if necessary, resampled, and the new samples shall be delivered at the place designated therefor in accordance with this subpart.*† [Reg. 5, sec. 9]

28.35 Removal of samples. The samples may be removed by the holder of the certificate covering the same (a) after 90 days from the date of withdrawal of the cotton from supervision, or (b) after the surrender to the board for cancelation of the certificate covering the cotton represented thereby without the issuance of a new certificate in lieu thereof, or (c) after 2 years from the date of the issuance of the Form C certificate therefor. In either case, if the holder of the

certificate desires to remove the samples, he must do so within 7 days after the date on which he becomes entitled to remove them in accordance with this section.*† [Reg. 5, sec. 10]

28.36 Removal of samples after withdrawal of classification request. If a classification request shall be withdrawn prior to the classification of the cotton pursuant thereto, the applicant may, within 7 days after the date of such withdrawal, remove any samples of the cotton involved then in the possession of the Department of Agriculture.*† [Reg. 5, sec. 11]

28.37 Disposition of samples not removed. Samples not removed in accordance with §§ 28.35, 28.36 shall be disposed of in accordance with § 28.25.*† [Reg. 5, sec. 12]

CLASSIFICATION

28.38 Method of classification. The classification of all cotton samples shall be according to the universal standards or other official cotton standards of the United States in effect at the time.*† [Reg. 6, sec. 1]

28.39 Order of classification. All cotton for which requests for classification or comparison shall be pending shall be classified, as far as practicable, in the order in which proper samples thereof, ready for such classification or comparison, shall have been delivered to the board whose duties include the examination thereof, except as otherwise provided in this subpart or when the chairman of the board or the Chief of the Bureau shall find that an emergency exists and shall order otherwise, but the informal classification of samples shall yield precedence to the classification and certification of cotton in accordance with §§ 28.26–28.37, or with the adjustment of disputes in Form B determinations.*† [Reg. 6, sec. 2]

28.40 Exposing of samples for classification. Classification shall not proceed until the samples, after being delivered to the board, shall have been exposed for such length of time as in the judgment of the chairman shall be sufficient to put them in proper condition for the purpose.*† [Reg. 6, sec. 3]

28.41 Classification dependent upon light, etc. Such classification shall proceed as rapidly as possible, but not when light or other conditions make uncertain the accuracy of the results to be obtained.*† [Reg. 6, sec. 4]

28.42 Lower grade (of two samples) to determine classification. If a sample drawn from one portion of a bale is lower in grade or shorter in length than one drawn from another portion of such bale, except as otherwise provided in this subpart, the classification of the bale shall be that of the sample showing the lower grade or shorter length.*† [Reg. 6, sec. 5]

28.43 Cotton reduced in value; effect. If cotton be reduced in value, by reason of the presence of extraneous matter of any character or irregularities or defects below its grade or below its apparent length of staple according to the official cotton standards of the United States, the grade or length of staple from which it is so

*†For statutory and source citations, see note to § 28.1.

reduced, and the grade or length of staple to which it is so reduced, and the quality or condition which so reduces its value shall be determined and stated.*† [Reg. 6, sec. 6]

28.44 Terms defined; cotton classification. For the purposes of classification of any cotton or of its comparison with a type or other samples, the following terms shall be construed, respectively, to mean:

(a) **Cotton of perished staple.** Cotton that has had the strength of fiber, as ordinarily found in cotton, destroyed or unduly reduced through exposure to the weather either before picking or after baling, or through heating by fire, or on account of water packing, or by other causes.

(b) **Cotton of immature staple.** Cotton that has been picked and baled before the fiber has reached a normal state of maturity, resulting in a weakened staple of inferior value.

(c) **Gin-cut cotton.** Cotton that shows damage in ginning through cutting by the saws, to an extent that reduces its value more than two grades.

(d) **Reginned cotton.** Cotton that has passed through the ginning process more than once, and cotton that, after having been ginned, has been subjected to a cleaning process and then baled.

(e) **Repacked cotton.** Cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots collected and rebaled, or cotton in a bale which is composed of a part of a larger bale or of two or more smaller bales or parts of bales.

(f) **False packed cotton.** Cotton in a bale (1) containing substances entirely foreign to cotton; (2) containing damaged cotton in the interior with or without any indication of such damage upon the exterior; (3) composed of good cotton upon the exterior and decidedly inferior cotton in the interior, in such manner as not to be detected by customary examination; or (4) containing pickings or linters worked into the bale.

(g) **Mixed packed cotton.** Cotton in a bale which, in the samples drawn therefrom, (1) shows a difference of more than two grades, if of the same color; or (2) if of the same grade but of different color, shows a difference of more than two color gradations; or (3) shows a difference of two or more grades and two or more color gradations; or (4) shows a difference in length of staple exceeding three thirty-seconds of an inch.

(h) **Water-packed cotton.** Cotton in a bale that has been penetrated by water during the baling process, causing damage to the fiber, or a bale that through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior.*† [Reg. 6, sec. 7]

SAMPLE OR TYPE COMPARISON

28.45 Procedure. When a comparison of cotton samples with other actual samples or with a type without a statement of the true classification is requested, the procedure and methods shall be as outlined in §§ 28.45–28.50.*† [Reg. 7, sec. 1]

28.46 Scope of comparison. Such comparison may be requested in respect to grade and/or staple or any physical characteristics of the cotton involved, including any of the component qualities embodied in the grade, but no comparison shall be made except in respect to the qualities specified in the request.*† [Reg. 7, sec. 2]

28.47 Submitting samples and types; how. The methods of submitting samples and types to the Department of Agriculture for examination and comparison shall be as prescribed in §§ 28.20–28.25.*† [Reg. 7, sec. 3]

28.48 Statement of classification in comparisons. In the comparison of cotton samples with other actual samples or with a type in respect to grade and/or staple, the true classification of such samples and types as to grade and/or staple length, in accordance with the official cotton standards of the United States, shall, where necessary in the opinion of the board, be determined and stated, and when appropriate the opinion or decision of the board shall be stated in further detail in accordance with §§ 28.49, 28.50.*† [Reg. 7, sec. 4]

28.49 Statement of findings of board in comparisons. (a) In the examination and comparison of samples with other samples and/or types of uniform grade, staple length, and/or other quality, the opinion or decision of the board shall be expressed as described in this section, as follows:

(b) For each bale of the cotton involved of which the grade is equal to the type or corresponding sample, by the words “grade equal.”

(c) For each bale of the cotton involved of which the staple is equal to the type or corresponding sample, by the words “staple equal.”

(d) For each bale of the cotton involved which is equal to the type or corresponding sample in any other respect in which an opinion is requested, by the word “equal”, together with other words necessary to indicate the nature of the equality.

(e) For each bale of the cotton involved of which the grade is below or above that of the type or corresponding sample, by the words “grade deficient” or “grade better”, as the case may be together with a statement of the amount of deficiency or superiority as measured by the grades of the universal standards.

(f) For each bale of the cotton involved of which the length of staple is less or more than that of the type or corresponding samples, by the words “staple deficient” or “staple better”, as the case may be, together with a statement of the amount of deficiency or excess length as measured in fractions of an inch.

(g) For each bale of the cotton involved which is not equal to or which is better than the type or corresponding sample in any other respect or in respect to any of the component qualities embodied in the grade, by the word “deficient” or “better”, together with other necessary words indicating the nature of the deficiency or superiority.*† [Reg. 7, sec. 5]

28.50 Comparison of samples. In the examination and comparison of samples with a type in which more than one grade, staple

*†For statutory and source citations, see note to § 28.1.

length, or quality of another kind are represented, the opinion or decision of the board shall be expressed as prescribed in this section as follows:

(a) If the proportions of each grade are the same in the samples as in the type, the cotton shall be said to be "equal in grade."

(b) If the proportions of each staple length are the same in the samples as in the type, the cotton shall be said to be "equal in staple length."

(c) If the proportions of the other qualities in question are the same in the samples as in the type, the cotton shall be said to be "equal" in respect to the qualities in question.

(d) If the proportions of any grade, staple length, and/or other qualities, including the component qualities of the grade, are more or less than the corresponding proportion in the type, the board shall indicate the bales which are better than the type, those equal to the type, and those which are deficient, and the amount of any superiority or deficiency in each case as measured by the official standards of the United States.*† [Reg. 7, sec. 6]

CERTIFICATES AND MEMORANDA

28.51 Issuance of certificate. As soon as practicable after the classification of cotton has been completed by a board of cotton examiners, there shall be issued a cotton class certificate of the appropriate kind showing the results of such classification.*† [Reg. 8, sec. 1]

28.52 Form A memorandum. When an informal classification has been made of any samples submitted for the purpose, the results of such classification may be stated in a Form A memorandum. Such memorandum shall not be deemed to be a final certificate within the meaning of section 4 of the Act (42 Stat. 1517; 7 U.S.C. 54).*† [Reg. 8, sec. 2]

28.53 Form B certificate. When the samples of any cotton involved in a dispute shall, by mutual agreement of the parties to such dispute or by their duly authorized agents, have been referred to a board for classification or for comparison with a type or with other samples, the chairman of the board shall issue an adjustment certificate known as a Form B certificate. Each Form B certificate shall show the true classification as determined in accordance with §§ 28.38–28.44, or the results of such comparison made as provided in §§ 28.45–28.50, in respect to the qualities in dispute of the cotton involved. Such certificate, when issued in the first instance by the appeal board of review examiners, or in other cases when it has been once reviewed under §§ 28.58–28.69, shall be deemed as between the parties to the dispute a final certificate within the meaning of section 4 of the Act (42 Stat. 1517; 7 U.S.C. 54), but no Form B certificate issued in the United States shall be deemed to be final in any respect when inconsistent with a valid Form C certificate covering the same cotton which has been issued under § 28.54. The original Form B certificate shall be furnished to the party submitting the samples, and an exact copy of the certificate shall be furnished to

the other party to the dispute or to his agent at the address given in the stipulation.*† [Reg. 8, sec. 3]

28.54 Form C certificate. When cotton has been submitted for sampling under supervision and classification as provided in §§ 28.26–28.37, there shall be issued a cotton class certificate known as a Form C certificate. Each Form C certificate shall show the true classification of the cotton in the respects specified in the request. Such certificate, when it has been once reviewed in accordance with §§ 28.58–28.69, shall be deemed to be a final certificate as to the classification shown, within the meaning of section 4 of the Act (42 Stat. 1517; 7 U.S.C. 54), in all cases except when superseded by a certificate or award made as provided in §§ 28.147, 28.148.*† [Reg. 8, sec. 4]

28.55 New certificate; issuance. Upon the written request of a holder of a cotton class certificate issued under this subpart, a new certificate shall be issued, without the reclassification of the cotton, to take the place of the former certificate for any cotton covered thereby, when necessary on account of the breaking or splitting of a lot or otherwise for the business convenience of such holder: Provided, That in any case where a part of a lot of cotton for which Form C certificate has been issued is removed from the certificated stock of any market the chairman of the board of cotton examiners or the supervisor of inspection may upon request cancel from said certificate the bales so removed. In any case where a new certificate is requested in accordance with this section the former certificate shall be surrendered for cancelation, and such new certificate shall bear a new number and the date of its issuance and the date of original certification and shall otherwise comply with this subpart.*† [Reg. 8, sec. 5]

28.56 Lost certificate may be replaced by duplicate. Upon the written request of the last holder of a valid Form C certificate or of a Form B certificate and a showing to the satisfaction of the chairman of the board which issued such certificate that it has been lost or destroyed and, if lost, that diligent effort has been made to find it without success, a new certificate shall be issued without the reclassification of the cotton. Such new certificate shall bear the same number and date of issuance as the lost or destroyed certificate and shall include a statement to the effect that it is a duplicate issued in lieu of the lost or destroyed original, as the case may be.*† [Reg. 8, sec. 6]

28.57 Surrender of certificate. For good cause any certificate issued under §§ 28.51–28.56 shall be surrendered to the chairman of the board which issued it, upon his request or upon the request of the Chief of the Bureau, and a new certificate complying with this subpart may be issued in substitution therefor. If such certificate be not surrendered upon such request, it shall nevertheless be invalid for the purposes of the Act and this subpart.*† [Reg. 8, sec. 7]

REVIEWS

28.58 Provision for reviews. Except as otherwise provided in this subpart, a review by the Appeal Board of Review Examiners of

*†For statutory and source citations, see note to § 28.1.

the classification or comparison of the cotton covered by a certificate may be had as provided in §§ 28.58–28.69.*† [Reg. 9, sec. 1]

28.59 No review; Form A memorandum. No review shall be granted of the classification represented in a Form A memorandum.*† [Reg. 9, sec. 2]

28.60 Form C certificate; review. The holder of a valid Form C certificate may have a review of the classification of the cotton covered thereby by filing written application for review within 1 year following the date shown in such certificate, provided the samples of the cotton shall not have been withdrawn. Each such application shall be filed with the secretary of the board which issued such Form C certificate.*† [Reg. 9, sec. 3]

28.61 Form B certificate; review. (a) Either party to a dispute in which the samples involved have been submitted for examination and/or comparison may apply for the review of classification and/or comparison represented in a Form B certificate, except in those cases where the Form B certificate was issued by the Appeal Board of Review Examiners in the first instance. Each such application shall be filed with the secretary of the board which made the original classification and/or comparison and shall be accompanied by a remittance of the costs in the proper form and amount as provided in §§ 28.118–28.123, 28.125, 28.128, 28.132, 28.134. The time allowed for the filing of such application shall be the same for both parties and as follows:

(b) If both parties to the dispute are located and doing business within the United States, 15 full calendar days following the date of the certificate.

(c) If either of the parties is located and doing business in a foreign country, 30 full calendar days following the date of the certificate.*† [Reg. 9, sec. 4]

28.62 Papers in “review” application to Appeal Board. Immediately upon the filing of an application for review, the secretary of the board which performed the original classification and/or comparison shall send the samples involved, together with a copy of the original request and the application for review to the secretary of the Appeal Board of Review Examiners at Washington, D. C.*† [Reg. 9, sec. 5]

28.63 Review; method of handling. Unless the use of new samples shall be necessary, a review pursuant to §§ 28.58–28.69 shall be handled on the basis of the samples of the cotton involved in the possession of the board.*† [Reg. 9, sec. 6]

28.64 Change of classification, only for error. The classification of any bale shown by the original cotton class certificate shall be changed only when it shall appear that such classification was clearly erroneous.*† [Reg. 9, sec. 7]

28.65 Classification; confirmation on review. If the classification of all the cotton as shown by the cotton class certificate be found to be correct, there shall be placed on the certificate a notation which shall be signed by the chairman of the board and dated, to the effect

that the classification of the cotton covered by such certificate has been reviewed and determined to be as stated in such certificate. Thereupon the certificate shall be returned to the person who requested the review. If the certificate be a Form B certificate, the other party to the dispute shall be advised in writing that the original classification has been confirmed.*† [Reg. 9, sec. 8]

28.66 Classification change; new certificate. If the classification of any bale of cotton as shown by the certificate shall be changed, such certificate shall be canceled and there shall be issued in lieu thereof a new certificate showing the classification of each bale as determined upon such review. There shall be incorporated in such certificate a statement to the effect that the classification of the cotton covered thereby has been reviewed and determined to be as stated in such certificate. Such certificate shall bear a new number and the date of its issuance and shall be delivered to the person who requested the review, and, if a Form B certificate, an exact copy shall be mailed to the other party to the dispute.*† [Reg. 9, sec. 9]

28.67 Reviews; Form B determinations. So far as applicable §§ 28.65, 28.66 shall likewise apply to reviews of the comparison of samples with types in Form B determinations, and in these cases each party shall be furnished a copy of the certificates showing the decision of the Appeal Board.*† [Reg. 9, sec. 10]

28.68 Procedure in review. In case a review is desired of the classification of any cotton represented in a certificate issued by a licensed classifier, the procedure shall be as provided in § 28.95.*† [Reg. 9, sec. 11]

28.69 Withdrawal of application for review. Any application for review may be withdrawn by the applicant at any time before the review classification of the cotton covered thereby has been completed, subject to the payment of such fees, if any, as may be assessed pursuant to §§ 28.118–28.134.*† [Reg. 9, sec. 12]

SUPERVISION OF TRANSFERS OF COTTON

28.70 Transfer of cotton. Whenever the owner or custodian of any cotton inspected and sampled for classification pursuant to §§ 28.26–28.37, or for which he holds valid Form C certificates, desires to transfer such cotton to a different place for the purpose of having it made available for delivery upon a contract made in accordance with section 5 of the United States Cotton Futures Act (39 Stat. 476; 26 U.S.C. 1095 (a)) at the place to which it is to be removed, the procedure shall be as outlined in §§ 28.70–28.75. Conformity to this procedure shall not be necessary in the case of the transfer of cotton between different warehouses when such transfer is effected under the supervision of an exchange inspection bureau or a representative of the bureau authorized for the purpose. In such cases the exchange inspection bureau shall report the facts to the board in accordance with § 28.27.*† [Reg. 10, sec. 1]

28.71 Supervision of transfer. The person who made the request for the classification, or the holder of a Form C certificate, shall

*†For statutory and source citations, see note to § 28.1.

file with the secretary of the board with which the classification request was filed, or which issued the certificate, or, if at a point at which there is no board, with the supervisor of inspection at that point, a written request for the supervision of such transfer. Such request shall be in such form as the Chief of the Bureau shall prescribe. It shall properly identify the cotton and state the respective locations from and to which the cotton is to be transferred. If a Form C certificate for such cotton has previously been issued by the board, the holder thereof shall surrender such certificate to the board for cancelation before such transfer shall take place. No single request for supervision of transfer shall cover both cotton of which the classification has been reviewed and that of which the classification has not been reviewed; nor shall the same request cover both tenderable and untenderable cotton; and no single transfer lot shall include more than 50 bales.*† [Reg. 10, sec. 2]

28.72 Transfer number; tag or seal on bales examined. As soon as practicable after the filing of the request, the chairman of the board of cotton examiners or the supervisor of inspection shall assign to it a transfer number. The owner of the cotton shall thereupon have such number legibly branded upon all bales covered by such transfer request. As soon as practicable thereafter the person filing such request shall make the cotton available to a supervisor or deputy supervisor of cotton inspection or a cotton examiner, who shall examine each bale of cotton covered by the transfer request, and shall attach to it, if found to be properly branded, a durable tag or seal provided for the purpose by the Bureau. Such tag or seal shall remain the property of the United States after being so attached while the bale is under the supervision of the Department of Agriculture. No person, unless authorized by the Bureau, shall remove or in any way tamper with such attached tag or seal or shall otherwise interfere with any person employed under the Act in the performance of his duties, while the cotton is under supervision of the Bureau.*† [Reg. 10, sec. 3]

28.73 Transfer certificate. Thereupon there shall be issued to the person requesting the same a transfer certificate in form prescribed for the purpose by the Chief of the Bureau, properly identifying the cotton according to such tags or seals, and the other means of identification in the possession of the bureau, showing the respective locations from which and to which the cotton is to be transferred, the classification of the cotton as previously determined, and whether or not such classification has been reviewed.*† [Reg. 10, sec. 4]

28.74 Surrender of transfer certificate; new certificate. When the cotton shall have been delivered for storage at the place of its destination, the transfer certificate shall be surrendered to the chairman of the board at such place or to such other official as the chief of the bureau shall designate for the purpose. Thereupon a supervisor of cotton inspection, or a cotton examiner, or other representative of the Bureau authorized for the purpose, shall examine each bale of cotton covered by such transfer certificate. If he finds that the entire lot of cotton represented by the transfer certificate has been preserved unbroken and that the identity of the bales has been properly preserved,

there shall be issued to the person requesting the same a cotton class certificate or certificates, complying with this subpart and valid for use under the United States Cotton Futures Act (39 Stat. 476; 26 U.S.C. Chapter 14), at such destination, without the reclassification of the cotton, except that whenever the exchange at the point of destination shall have put into effect a system of handling cotton and samples thereof approved for the purpose by the Chief of the Bureau, under which a board of cotton examiners may place its certificate of classification directly on the storage or press receipt covering and properly identifying the cotton involved, the preservation unbroken of the entire lot represented by the transfer certificate shall not be required.*† [Reg. 10, sec. 5]

28.75 Supervision of transfer; when not granted. Supervision of transfers in accordance with §§ 28.70–28.75 shall not be granted, nor shall any certificate be issued, with respect to any bale which is found to be in such condition that its classification is different from that shown by the Form C certificate, unless such bale shall be reinspected and, if necessary, reclassified in accordance with this subpart.*† [Reg. 10, sec. 6]

LICENSED CLASSIFIERS

28.76 Applications for licenses to classify cotton. (a) Applications for licenses to classify cotton under section 3 of the Act (42 Stat. 1517; 7 U.S.C. 53) shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be in English and shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-first birthday and that he is an actual resident of the continental United States, (2) satisfactory evidence of his training and experience in the actual classification of cotton, (3) a statement of the standards for the cotton for the classification of which a license is desired, (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and this subpart so far as they may relate to him, and (5) such other information as the Chief of the Bureau may deem necessary.

(c) The applicant shall furnish such additional information as the Secretary or the Chief of the Bureau shall at any time find to be necessary to the consideration of his application.*† [Reg. 11, sec. 1]

28.77 Examination of applicant. Each applicant for a license as a classifier and each licensed classifier shall, when requested, submit to an examination or test to show his ability to classify cotton, and each applicant who already holds a license under this Act shall also make available for inspection copies of the standards for classification used or to be used by him.*† [Reg. 11, sec. 2]

28.78 Examination; scope of "Limited License." Examinations of applicants for licenses shall cover the classification of cotton in accordance with any or all of the standards listed below (except that no examination will be given nor license issued for determining length of staple only to an applicant who does not already hold a

*†For statutory and source citations, see note to § 28.1.

license for grading), and each license under the Act and each identification card shall specify the standards with respect to which it is issued:

(a) The official cotton standards of the United States for grades and colors of American upland cotton.

(b) The official cotton standards of the United States for grades and colors of American-Egyptian cotton.

(c) The official cotton standards of the United States for length of staple not over $1\frac{1}{8}$ inches.

(d) All of the official cotton standards of the United States for length of staple.

Any license hereafter issued which does not authorize the licensee to determine both the grade of American upland cotton and all lengths of staple, or the grade of American-Egyptian cotton and all lengths of staple, shall be conspicuously marked "Limited License."*† [Reg. 11, sec. 3]

28.79 Examination of licensees. Examination of licensees, when required, shall cover the classification of cotton with respect to any or all of the standards specified in their licenses. In addition any licensee who makes the necessary application and pays the fee specified in § 28.129 may be examined and licensed with respect to the classification of cotton according to any of the foregoing standards for which he does not already hold a license.*† [Reg. 11, sec. 4]

28.80 Period of license. The period for which a license may be issued shall be from the first day of August until and including the thirty-first day of July following. Renewals shall be for not more than 1 year beginning with the first day of August of each year: Provided, That licenses issued on and after June 1 of each year shall be for the period ending on July 31 of the following year.*† [Reg. 11, sec. 5]

28.81 Conditions as to licensing of classifier. It shall be a condition of the licensing of any cotton classifier under this subpart and of the retention by him of a license, that during the active cotton season each year he shall be engaged mainly in or in connection with the classification of cotton; that all cotton classified by him shall be graded and stapled in accordance with the official cotton standards of the United States; that his sample and type comparisons, if any, shall be truly and accurately made; and that he shall not use his license or allow the same to be used for any improper purpose.*† [Reg. 11, sec. 6]

28.82 Fee for classifying cotton. Whenever any classifier licensed under the Act and in accordance with this subpart shall classify and/or certificate any cotton or samples in consideration of a stated fee, the fee charged shall be reasonable and shall be in accordance with a schedule previously submitted to, and approved by, the Chief of the Bureau.*† [Reg. 11, sec. 7]

28.83 Copies of class certificates to be kept. Each licensed classifier shall keep for a period of 1 year in a place accessible to interested persons a copy of each certificate issued by him under this subpart.*† [Reg. 11, sec. 8]

28.84 Records of bale classification. Each licensed classifier shall keep, or there shall be kept for him, for a period of at least 1 year a record of the classification of each individual bale of cotton classified by him: Provided, That this requirement shall apply only to cotton actually owned, received, or handled by the person for whom such service is performed. Provided further, That where any licensed classifier shall serve on a committee in the classification of any cotton, such record shall show the classification of such cotton and the participation of each licensed classifier engaged in such classification. Each licensed classifier shall permit any officer or agent of the Bureau, authorized by the Chief of the Bureau for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and this subpart.*† [Reg. 11, sec. 9]

28.85 Reports to be made on forms furnished. Each licensed classifier shall, from time to time when requested by the Bureau, make reports on forms furnished for the purpose by the Bureau bearing upon his activities as such licensed classifier.*† [Reg. 11, sec. 10]

28.86 Information of violations. Every person licensed under the Act shall immediately furnish the Chief of the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or this subpart has been violated.*† [Reg. 11, sec. 11]

28.87 Suspension of license. Pending investigation the Secretary may, whenever he deems necessary, suspend the license of a licensed classifier temporarily without hearing. Upon written request and a satisfactory statement of reason therefor submitted by the licensed classifier, the Secretary or the Chief of the Bureau may, without a hearing, suspend or cancel the license issued to such licensed classifier. The Secretary or the Chief of the Bureau may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a licensed classifier when such licensed classifier (a) has ceased to perform services as such classifier, (b) has knowingly or carelessly classified cotton improperly, (c) has violated or evaded any provisions of the Act or the regulations thereunder so far as the same may relate to him, (d) has used his license or allowed it to be used for any improper purposes, or (e) has in any manner become incompetent or incapacitated to perform the duties of such licensed classifier. Before the license of any licensed classifier is finally suspended or revoked pursuant to section 3 of the Act (42 Stat. 1517; 7 U.S.C. 53), such licensed classifier shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be accorded if requested in accordance with § 28.89.*† [Reg. 11, sec. 12]

*†For statutory and source citations, see note to § 28.1.

28.88 Suspended license to be returned to Bureau. If a license issued to a licensed classifier is suspended, revoked, or canceled, such license shall be returned to the Bureau. At the expiration of any period of suspension of such license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed classifier to whom it was originally issued.*† [Reg. 11, sec. 13]

28.89 Hearings granted licensees. For the purpose of a hearing under the Act or §§ 28.76–28.96, the license involved shall be allowed a reasonable time, fixed by the Secretary or by an official of the Department of Agriculture designated by him for the purpose, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before and at the time and place fixed by the Secretary or an official of the Department of Agriculture designated by him for the purpose. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or an official of the Department of Agriculture authorized by the Secretary. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department of Agriculture. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 11, sec. 14]

28.90 Lost license may be duplicated. Upon satisfactory proof of the loss or destruction of a license issued to a licensed classifier, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.*† [Reg. 11, sec. 15]

28.91 Classifier; misrepresentation. No person shall in any way represent himself to be a classifier licensed under the act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the Act.*† [Reg. 11, sec. 16]

28.92 Class certificate; form. Each class certificate issued under the Act by a licensed classifier shall be in a form approved for the purpose by the Chief of the Bureau and shall embody within its written or printed terms—

- (a) The caption “Licensed cotton classifier’s certificate.”
- (b) The serial number assigned to it.

- (c) Whether it is an original, a duplicate, or other copy.
- (d) The date and place of issuance.
- (e) That the certificate is issued by a classifier licensed under the United States Cotton Standards Act and regulations in this subpart.
- (f) A list of the standards with respect to which the classifier is licensed.
- (g) The exact location of the cotton at the time of classification.
- (h) A statement in accordance with the facts in each case, either (1) that the classifier knows the samples upon which his classification is based to be true and correct samples of the cotton involved; or (2) that the samples were drawn by a sampler licensed under the United States Cotton Standards Act, as amended, or under the United States Warehouse Act; or (3) in other cases in which the classifier does not know that the samples are truly representative of the cotton involved, a statement to the effect that the certificate covers the grade or other class of such samples only, submitted for classification and represented as having been drawn from the bales described therein, in which case the name and address of the person who submitted the samples shall be stated, and the certificate shall carry the notation "Special sample certificate."
- (i) The identification of each bale of cotton by the tag number or mark by which the bale was identified at the time the sample was taken.
- (j) The grade, length of staple, or other class of each bale or sample of cotton covered thereby.
- (k) The signature of the licensed classifier.

In addition, the class certificate may include any other matter not inconsistent with the Act or this subpart.*† [Reg. 11, sec. 17]

28.93 Certificate by licensed classifier not final. A certificate issued by a licensed classifier shall in no case be deemed a final certificate within the meaning of section 4 of the Act (42 Stat. 1517; 7 U.S.C. 54). The certificate of a board covering any cotton represented in a licensed cotton classifier's certificate shall at once invalidate and supersede a licensed classifier's certificate as to such classification.*† [Reg. 11, sec. 18]

28.94 Licensed classifier's certificate; when null and void. The shipment, sale, or consignment of any cotton or the sale or hypothecation of any warehouse receipts, compress receipts, or bills of lading representing any cotton covered by a licensed classifier's certificate shall render such certificate null and void unless the certificate be attached to the warehouse receipts, bills of lading, or invoices by which the cotton is moved or sold or by which title to the cotton is passed or hypothecated.*† [Reg. 11, sec. 19]

28.95 Review of classification. In case a review is desired of the classification of any cotton represented in a valid certificate issued by a licensed classifier as provided in § 28.92, the holder of such certificate shall surrender the same, together with samples of the cotton, to a board and receive in its stead a certificate signed by the chairman of such board. The certificate of the board issued in lieu of the licensed classifier's certificate in accordance with this section shall be subject

*†For statutory and source citations, see note to § 28.1.

to review by the appeal board of review examiners, provided a review would have been granted if the classification had been performed originally by a board.*† [Reg. 11, sec. 20]

28.96 Inconsistent classifications. In the event any licensed classifier shall find that any cotton has been inconsistently classified by two or more licensed classifiers, he shall thereupon bring the matter to the attention of the board of supervising cotton examiners, which board shall review all the facts obtainable and, if possible, determine the classification of the cotton. The board may examine or requisition such samples of the cotton in question as may be in the hands of such licensed classifiers, or, in the discretion of the chairman may request that new samples be drawn, if obtainable. In the event samples are not obtainable, the board may, if in its judgment sufficient facts are available, decide which of the inconsistent classifications shall be sustained. The records of the licensed cotton classifiers concerned shall be corrected to show the findings of the board.*† [Reg. 11, sec. 21]

LICENSED SAMPLERS

28.97 Applications for licenses to sample cotton. (a) Applications for licenses to sample cotton shall be made to the Chief of the Bureau of Agricultural Economics on forms furnished for the purpose by him.

(b) Each such application shall be in English and shall be signed by the applicant, shall be verified by him under oath or affirmation, administered by a duly authorized officer, and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-first birthday and that he is an actual resident of the continental United States, (2) satisfactory evidence of his experience in the handling and sampling of cotton, (3) a statement by the applicant that he agrees to comply with and abide by the terms of the law and this subpart so far as they may relate to him, and with instructions issued from time to time by the Chief of the Bureau governing the sampling of cotton, and (4) such other information as the Chief of the Bureau may deem necessary.*† [Reg. 12, sec. 1]

28.98 Bond to be furnished by applicant. (a) Each applicant for a license to sample cotton shall, as a condition to the granting thereof, execute and file with the Chief of the Bureau a good and sufficient bond to the United States to secure the faithful performance of his duties as a licensed sampler under the terms of the Act, as amended, and this subpart. Said bond shall be in such form and amount, not less than \$1,000, and shall have such surety or sureties as shall be approved by the Chief of the Bureau, subject to service of process in suits on the bond within the State, district, or territory, in which such licensee shall perform services as a licensed cotton sampler. Any person injured by the breach of any obligation to secure which a bond is given under this paragraph shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach.

(b) If the Chief of the Bureau finds that the existence of conditions warrants such action, there shall be added to the amount previously re-

quired under paragraph (a) of this section such additional amount as he shall deem necessary.*† [Reg. 12, sec. 2]

28.99 Period of license. The period for which a license may be issued under this subpart shall be from the first day of August until and including the thirty-first day of July following. Renewals shall be for 1 year, beginning with the first day of August of each year: Provided, That licenses or renewals issued on and after June 1 of any year shall be for the period ending on July 31 of the following year.*† [Reg. 12, sec. 3]

28.100 New bond required for license renewal. It shall be a condition of the renewal of any license hereunder that the licensed sampler shall file a new bond in the required amount with, and that such bond shall be approved by, the Chief of the Bureau or his authorized representative, Provided That in the discretion of the Chief of the Bureau or his authorized representative a properly executed instrument in form approved by him amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the licensed sampler and otherwise complying with §§ 28.98–28.101 may be filed in lieu of a new bond.*† [Reg. 12, sec. 4]

28.101 Bond to be approved by Chief of Bureau. No bond, amendment, or continuation thereof shall be deemed accepted for the purpose of §§ 28.98, 28.100 until it has been approved by the Chief of the Bureau or his authorized representative.*† [Reg. 12, sec. 5]

28.102 Examination; sampler. Each applicant for a license as a sampler and each licensed sampler, whenever requested by an authorized agent of the Bureau, shall submit to an examination or test to show his ability properly to perform the duties for which he is applying for a license or for which he has been licensed, and each such applicant or licensee shall furnish the Bureau any information requested at any time in regard to his sampling of cotton.*† [Reg. 12, sec. 6]

28.103 License shall be posted. Each licensed sampler shall keep his license conspicuously posted at the place where he functions as a sampler or in such other place as may be approved by the Bureau.*† [Reg. 12, sec. 7]

28.104 No discrimination in work of sampler. Each licensed sampler, when requested, shall without discrimination, as soon as practicable and upon reasonable terms, sample any cotton if the same be made available to him under conditions that will permit proper sampling. Each such licensee shall give preference to those who request his services as such over persons who request his services in any other capacity, excepting only the services required of licensed classifiers under the Act.*† [Reg. 12, sec. 8]

28.105 Certificate of sampler; form. Each licensed sampler shall be provided with seals and with tags and samplers' certificates approved or furnished by the Chief of the Bureau or his representative for identifying the samples of cotton and for certifying the condition of the cotton represented by such samples. There shall be clearly written or printed on the face of each certificate (a) the number thereof; (b) a suitable caption; (c) the warehouse or other

*†For statutory and source citations, see note to § 28.1.

location of the cotton involved; (d) the identification number of the bale from which the sample was drawn; (e) the date on which the sample was drawn, and (f) a statement indicating that the sample was drawn by a sampler licensed in accordance with the United States Cotton Standards Act, as amended. The use of such tags and certificates shall be in conformity with instructions issued from time to time by the Chief of the Bureau.*† [Reg. 12, sec. 9]

28.106 Drawing of sample; weight. Each official sample taken from a bale of cotton by a licensed sampler shall be drawn, prepared, and identified in such manner as may be required by the Chief of the Bureau. Each bale shall be sampled from both the top side and the bottom side, not less than 3 ounces of cotton to be drawn from each side. The head of the bale shall be properly inspected and any conditions not fully indicated by the sample shall be specified by the licensed sampler in the certificate accompanying such sample.*† [Reg. 12, sec. 10]

28.107 Handling of samples. Each licensed sampler shall carefully handle each official sample in such manner as not to cause loss of sand or other foreign material therefrom or any change otherwise in its representative character.*† [Reg. 12, sec. 11]

28.108 Examination of books of sampler. Each licensed sampler shall permit any authorized officer or agent of the Bureau to inspect at any time his books, papers, records, and accounts relating to the performance of his duties under §§ 28.97–28.114.*† [Reg. 12, sec. 12]

28.109 Suspension of sampler's license. Pending investigation, the Secretary may, whenever he deems necessary, suspend the license of a sampler temporarily without a hearing. Upon a written request and a satisfactory statement of reasons therefor submitted by the licensee or when the licensee has ceased to perform the services for which licensed, the Secretary or the Chief of the Bureau may, without a hearing, suspend or revoke the license issued to such licensee. The Secretary may, after opportunity for hearing, when possible, has been afforded in the manner prescribed herein, suspend or revoke a license issued to a sampler when such licensee has, in any manner, become incompetent or incapacitated to perform his duties as such licensee or has ceased to perform services as a cotton sampler or has violated or evaded any provision of the Act, as amended, or this regulation so far as the same may relate to him. Before the license of any sampler is finally suspended or revoked for failure of the licensee to comply with the Act, as amended, or §§ 28.102–28.109, such licensee shall be furnished by the Secretary or his designated representative a statement specifying the charges and shall be allowed a reasonable time in which he may answer the same in writing and/or apply for a hearing, an opportunity for which shall be afforded in accordance with § 28.89.*† [Reg. 12, sec. 13]

28.110 Return of suspended license to Department. In case a license issued to a sampler is suspended or revoked by the Secretary or by the Chief of the Bureau such license shall be returned to the Department. At the expiration of any period of suspension of such

license, unless in the meantime it be revoked, the dates of beginning and termination of such suspension shall be endorsed thereon, it shall be returned to the person to whom it was originally issued, and it shall be posted as prescribed in § 28.103.*† [Reg. 12, sec. 14]

28.111 Lost license may be duplicated. Upon satisfactory proof of the loss or destruction of a license issued to a sampler hereunder a new license may be issued under the same or a new number.*† [Reg. 12, sec. 15]

28.112 Reports of licensed sampler. Each licensed sampler, when requested, shall make reports on forms furnished for the purpose by the Bureau bearing upon his activities as such licensee.*† [Reg. 12, sec. 16]

28.113 Sampler; misrepresentation. No person shall in any way represent himself to be a sampler licensed under the Act, as amended, unless he holds an unsuspended and unrevoked license issued thereunder.*† [Reg. 12, sec. 17]

28.114 Condition as to issuance of license. It shall be a condition of the issuance of a license to any cotton sampler under § 28.97 that the licensee shall not draw any official sample from any cotton in which he or his employer is financially interested.*† [Reg. 12, sec. 18]

OFFICIAL COTTON STANDARDS

28.115 Practical forms of official cotton standards. (a) Practical forms of any of the official cotton standards of the United States enumerated in this paragraph, each certified under the seal of the United States Department of Agriculture and under the signature of the Secretary, thereto affixed by himself or by some other official or employee of the Department thereunto duly authorized by him, and in the case of the standards for grade and color accompanied by photographs representing the cotton in such practical forms on the date of certification, will be furnished to any person requesting the same, upon prepayment of the cost thereof as determined by the Secretary, subject to the other conditions of this section.

Standards for grades of American upland cotton as revised effective August 20, 1936, as follows:

- No. 2, or Strict Good Middling.
- No. 3, or Good Middling.
- No. 4, or Strict Middling.
- No. 5, or Middling.
- No. 6, or Strict Low Middling.
- No. 7, or Low Middling.
- No. 8, or Strict Good Ordinary.
- No. 9, or Good Ordinary.
- No. 3, Tinged, or Good Middling Tinged.
- No. 4, Tinged, or Strict Middling Tinged.
- No. 5, Tinged, or Middling Tinged.
- No. 6, Tinged, or Strict Low Middling Tinged.
- No. 7, Tinged, or Low Middling Tinged.

Standards for grades and colors of American-Egyptian cotton, as follows:

- | | | |
|--------------|--------------|--------------|
| Grade No. 1. | Grade No. 3. | Grade No. 5. |
| Grade No. 2. | Grade No. 4. | |

*†For statutory and source citations, see note to § 28.1.

Standards for length of staple, as follows:

AMERICAN UPLAND COTTON

$\frac{3}{4}$ inch	$1\frac{1}{32}$ inches	$1\frac{1}{4}$ inches
$\frac{13}{16}$ inch	$1\frac{1}{16}$ inches	$1\frac{9}{32}$ inches
$\frac{7}{8}$ inch	$1\frac{3}{32}$ inches	$1\frac{5}{16}$ inches
$\frac{29}{32}$ inch	$1\frac{1}{8}$ inches	$1\frac{11}{32}$ inches
$\frac{15}{16}$ inch	$1\frac{5}{32}$ inches	$1\frac{3}{8}$ inches
$\frac{31}{32}$ inch	$1\frac{3}{16}$ inches	$1\frac{1}{2}$ inches
1 inch	$1\frac{7}{32}$ inches	

AMERICAN-EGYPTIAN COTTON

$1\frac{1}{2}$ inches	$1\frac{5}{8}$ inches	$1\frac{3}{4}$ inches
$1\frac{9}{16}$ inches		

Tentative standards for preparation of American upland long-staple cotton:

Strict Middling A Preparation.
 Strict Middling B Preparation.
 Strict Middling C Preparation.
 Middling A Preparation.
 Middling B Preparation.
 Middling C Preparation.
 Strict Low Middling A Preparation.
 Strict Low Middling B Preparation.
 Strict Low Middling C Preparation.

(b) Each application for practical forms of the official cotton standards shall be upon a blank furnished or approved by the Bureau, shall be signed by the applicant, and shall be accompanied by certified check, draft, post-office money order, or express money order, payable to the "United States Department of Agriculture", in an amount sufficient to cover the cost of the forms requested, and shall incorporate the following conditions:

(1) That no practical form of any of the official cotton standards or of the tentative standards for the preparation of long-staple cotton shall be considered or used as representing such standards after the date of its cancelation in accordance with this section or in any event after the expiration of 18 months following the date of its certification: Provided, That sets of practical forms stored, protected, and preserved in accordance with certain agreements for the adoption of universal standards may be used for such periods as may be prescribed in such agreements.

(2) That said practical forms and the photographs accompanying them shall be subject to inspection on any business day, between the hours of 9 a. m. and 4 p. m., by the Secretary or by an officer or agent of the Department of Agriculture authorized by the Chief of the Bureau.

(3) That the signature of the Secretary certifying to any practical form, or any photograph of any type or sample of said practical form accompanying the same, or both, may be canceled if it be found, upon such inspection, either that any of said forms for any reason misrepresents the official cotton standards or that any such photograph has been altered or mutilated.*† [Reg. 13, sec. 1]

28.116 Universal cotton standards. Whenever any of the official cotton standards shall have been adopted as universal standards by an association or exchange located in a country other than the United States, the name of such association or exchange may be shown on the outside of the box or container.*† [Reg. 13, sec. 2]

28.117 Containers of "original" cotton standards; where kept; reserve sets. (a) The containers of the original universal standards and other official cotton standards of the United States, whenever such official standards are represented by practical forms, shall be marked as prescribed in the order or orders of their establishment, wrapped, and sealed with wax seals. When so marked, wrapped, and sealed they shall be deposited in a suitable vault or in a steel safe or safes, which safe or safes shall be kept sealed with an imprinted seal. The dies used to seal the first reserve set of the universal standards shall be deposited in the Treasury of the United States subject to the order of the Secretary of Agriculture; those used to seal the other official cotton standards of the United States shall remain in the custody of the Chief of the Bureau. Such safes shall be sealed in the presence of the Solicitor of the Department and the Chief of the Bureau, or of persons temporarily acting in their stead, and shall thereafter be opened only in the presence of the same and upon written order of the Secretary or of the person acting in his stead.

(b) As soon as practicable after the second Monday in March 1939, and after the second Monday in March of each third year thereafter there shall be prepared two full sets of practical forms of copies of the universal standards for grades and colors of American upland cotton, which shall be known as "reserve sets" and which, upon the certification and recommendation of qualified experts, shall be certified by the Secretary as true copies of the original standards as and when established. Such reserve sets shall be enclosed in metal-lined cases, likewise sealed in the presence of the Solicitor of the Department and the Chief of the Bureau, or of persons temporarily acting in their stead. One such set, to be known as the "first reserve set", shall then be delivered to agents of the Treasury Department of the United States to be deposited in the United States Treasury, and the other, to be known as the "second reserve set", shall be deposited in the vaults of the Bureau in the immediate control and custody of the Chief of the Bureau. Such reserve sets shall remain so deposited until such time as they shall be required for examination, reproduction, and use, as set forth in paragraph (c) of this section. When so required they shall be withdrawn only upon the order of the Secretary or of the person temporarily acting in his stead. The seals upon the cases and containers of the practical forms shall be broken only in the presence of the Solicitor of the Department and the Chief of the Bureau, or persons temporarily acting in their stead, and experts qualified in the classification of American upland cotton authorized to be present.

(c) As soon as practicable after the opening, as provided in paragraph (b), of the first reserve set, two new reserve sets shall be prepared by comparison with the first reserve set, which shall be taken to represent so far as possible the original standards as and when established, and which shall, in turn, be numbered, incased, sealed,

*†For statutory and source citations, see note to § 28.1.

and stored in the manner prescribed in paragraph (b). The first reserve set of the preceding 3-year period shall then be again sealed and shall remain in the custody of the Chief of the Bureau as a permanent record. If, upon the opening and examination of the first reserve set as herein provided, it shall appear that such set has undergone any substantial change, the second reserve set shall, for the purposes of this paragraph, be used in its stead. If the second reserve set is not so needed, it shall be retained by the Bureau as a permanent record.*† [Reg. 13, sec. 3]

FEES AND COSTS

28.118 Fees and costs; payment. All fees for services of classification, comparison, certification, or review by a board of examiners shall be paid at the time of filing the request for the service desired, except that in the discretion of the Chief of the Bureau bills may be delivered to persons from whom payment for fees or expenses or for the supervision of transfers may become due. Such bills shall be rendered as soon as practicable after the 15th and the last day of each month for amounts due and unpaid on such dates. When necessary, in the discretion of the chairman of the board or the supervisor of inspection, any bill may be rendered at an earlier date for any fees then due from the person to whom such bill may be rendered. Payment of any such bill shall be made as soon as possible after the rendition thereof, but in any event not later than the expiration of 2 weeks thereafter.*† [Reg. 14, sec. 1]

28.119 Amounts of fees for classification; exemption. (a) For the classification and certification of any cotton or samples, whether informal or otherwise, or for the review of a licensed cotton-classifier's certificate, the person requesting the classification or review shall pay a fee, as follows, except as provided in paragraph (c) of this section:

(1) If the classification is with respect to grade only, at the rate of 15 cents a bale.

(2) If the classification is with respect to staple only, at the rate of 15 cents a bale.

(3) If the classification is with respect to any other single quality, at the rate of 15 cents a bale.

(4) For all Form C determinations and in other cases where the classification is with respect to two or more of the qualities specified in (1), (2), or (3), at the rate of 25 cents a bale.

(b) When a comparison is requested by any samples with a type or with other samples, the fees prescribed in paragraph (a) of this section shall apply to every sample involved, including each of the samples of which the type is composed, except that no charge shall be made for the classification of a type composed of less than 10 samples.

(c) The fees provided for in paragraph (a) of this section may be waived as to the classification and certification or the review of the classification of any cotton for the account of any charitable or philanthropic organization where such cotton is intended to be

used under an act or joint resolution of Congress for the relief of public distress or to be exchanged for goods to be so used. To demonstrate the classification of cotton according to the official cotton standards, the Chief of the Bureau may authorize for limited periods of time, in designated localities, the informal classification of samples submitted for the purpose and the issuance without charge of Form A memoranda evidencing such classification, but such samples shall be disposed of as provided in § 28.25 unless claimed and removed by the person submitting the same, at or about the time of classification.*† [Reg. 14, sec. 2]

28.120 Fee for new certificate. For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of 25 cents when the number of bales covered by the new certificate is 10 or less, or a fee of 50 cents when the number of bales covered by such certificate is more than 10. In cases where a part of a lot of cotton represented by any one certificate is removed from the certificated stock of any market and the bales so removed are canceled from such certificate at the request of the holder thereof, in accordance with § 28.55, no charge shall be made for such cancelation unless the holder requests the return of the official samples representing the bales so canceled, in which event a service charge of 10 cents will be assessed for each certificate involved.*† [Reg. 14, sec. 3]

28.121 Fee for review classification or comparison. For the review of the classification or comparison of any cotton the fee shall be 30 cents per bale where two or more qualities are involved, and 20 cents per bale where a single quality is involved. Such fees shall cover the review classification or comparison and any expense incident to forwarding and returning samples, whether the review is performed in Washington, D. C., or by a committee of the appeal board functioning temporarily in the field.*† [Reg. 14, sec. 4]

28.122 When no fee collected for new certificate. No fee shall be collected for a new cotton class certificate issued in lieu of a prior certificate solely for the purpose of correcting clerical errors therein or for the purpose of substituting a new form applicable to outstanding certificates or without an application therefor.*† [Reg. 14, sec. 5]

28.123 Fee when request for classification is withdrawn. When the request for the classification or comparison of any cotton or an application for review shall be withdrawn after the classification of such cotton has been started pursuant thereto, the person filing the same shall pay the fee prescribed by §§ 28.119, 28.121 as to any such cotton already classified.*† [Reg. 14, sec. 6]

28.124 Fee at place where board or supervisor not located. Whenever the supervision of the inspection and sampling or of the transfer of any cotton shall be performed at a place other than that where a board or supervisor of cotton inspection is regularly located, the person making request for the classification or the supervision of

*†For statutory and source citations, see note to § 28.1.

the transfer of the cotton shall pay, in addition to the costs prescribed in §§ 28.119–28.134, 5 cents for each bale involved.*† [Reg. 14, sec. 7]

28.125 Expenses to be borne by party requesting classification. The expense of inspection and sampling, the preparation of the samples, and the delivery of such samples to the classification room of the board or other place specifically designated for the purpose by the Chief of the Bureau or by the chairman of such board, shall be borne by the party requesting the classification.*† [Reg. 14, sec. 8]

28.126 Fee for transfer supervision. For the supervision of the transfer of cotton in accordance with §§ 28.70–28.75, including such new certificates incidental thereto as may be necessary for the delivery of such cotton upon a contract made in accordance with section 5 of the United States Cotton Futures Act (39 Stat. 476; 26 U.S.C. 1092), without its reclassification, the applicant for such transfer supervision shall pay a fee of 30 cents per bale.*† [Reg. 14, sec. 9]

28.127 Fee; substitution for Form C certificate. Whenever the holder of a Form C certificate covering cotton located at a place which has been designated as a point of delivery on futures contracts shall, without change in the place of storage of such cotton, surrender such certificate and request in lieu thereof a certificate or certificates valid for use in the delivery of such cotton upon a contract under section 5 of the United States Cotton Futures Act (39 Stat. 476; 26 U.S.C. 1092), he shall pay a service fee of 10 cents for each bale involved.*† [Reg. 14, sec. 10]

28.128 Advance deposits. If requested by the secretary of the board or supervisor of inspection with whom a request is required to be filed or by the Chief of the Bureau, the person from whom any payment under §§ 28.118–28.131 may become due shall make an advance deposit to cover such payment in such amount as may be necessary in the judgment of the official requesting the same.*† [Reg. 14, sec. 11]

28.129 Fee for examination of applicant for license; renewals. For the examination of an applicant for a license to classify cotton in accordance with §§ 28.76–28.79, the fee shall be \$10, but no additional charge shall be made for the issuance of a license to an applicant found to be properly qualified. For each renewal of a classifier's license the fee shall be \$5. For the issuance of a cotton sampler's license under §§ 28.97–28.114, the applicant shall pay a fee of \$5, and for each renewal a fee of \$3.*† [Reg. 14, sec. 12]

28.130 Cost of practical forms of official standards. (a) The cost of any of the practical forms of the universal standards or other official cotton standards of the United States for grade of color enumerated in § 28.115, shall be at the rate of \$5 each, f. o. b. Washington, D. C., for shipments within the continental United States, and \$6.25 each, delivered to destination, for shipments outside the continental United States.

(b) The costs specified in paragraph (a) of this section shall likewise apply in cases where new samples are furnished in replacement

of old samples in any box of the practical forms returned to the Department for the purpose, except that when the number of new samples so furnished is five or less in one box the cost shall be at the rate of 40 cents for each sample.

(c) The cost of any of the practical forms of the official cotton standards of the United States for length of staple enumerated in § 28.115, shall be at the rate of \$1 each, f. o. b. Washington, D. C., for shipments within the continental United States, and \$1.25 each, delivered to destination, for shipments outside the continental United States.*† [Reg. 14, sec. 13]

28.131 Cost of practical forms of tentative standards. Practical forms of the tentative standards for preparation of American upland long-staple cotton will be furnished to any person upon prepayment of the costs thereof, which shall be at the rate of \$3 each, f. o. b. Washington, D. C., for shipment within the continental United States, and \$4 each, delivered to destination, for shipment outside of the continental United States.*† [Reg. 14, sec. 14]

28.132 Payments; procedure. Any payment or advance deposit under §§ 28.118–28.131 shall be by certified check or by draft or post-office or express money order, payable to the order of the “United States Department of Agriculture”, and may not be made in cash except in cases where the total payment or deposit does not exceed \$1.*† [Reg. 14, sec. 15]

28.133 Cost of practical forms hereafter established. The cost of practical forms of the universal standards or other official cotton standards which may hereafter be established shall be such as the Secretary of Agriculture may determine.*† [Reg. 14, sec. 16]

28.134 No voiding or modifying claims for payment. Nothing in this subpart shall be construed to void or modify any claim which a person or party requesting and paying for a service may have against any other person or party for the payment of part or all of such costs.*† [Reg. 14, sec. 17]

28.135 Loaning of forms and exhibits. In the discretion of the Chief of the Bureau, limited numbers of copies of the practical forms of any of the official standards, and specially prepared exhibits illustrating any of such standards, may be loaned to educational and other institutions for demonstrational purposes.*† [Reg. 14, sec. 18]

AMERICAN COTTON LINTERS

28.136 Samples submitted. Insofar as applicable, and not inconsistent with §§ 28.136–28.146, the provisions of the foregoing subpart relating to the organization and functions of boards of cotton examiners; requests for classification and comparison; submission and disposition of samples in Form A and Form B determinations and the submission of cotton, supervision and sampling in Form C determinations; classification; sample and type comparison; certificates and memoranda, Forms A, B, and C, shall likewise apply to the organization and functions of boards of cotton linters examiners and to the submission and disposition of samples of linters in Form A and Form B determinations and the submission of bales of linters

*†For statutory and source citations, see note to § 28.1.

in Form C determinations; the classification of linters; sample and type comparison of linters; and certificates and memoranda evidencing the classification and comparison of linters: Provided, That each sample of American cotton linters submitted to a board of cotton linters examiners for classification and/or comparison shall weigh not less than $\frac{1}{2}$ pound, shall be wrapped separately, and shall contain a coupon or tag by which the identity of the bale from which it is drawn may be determined; that the head of the bale shall be properly inspected, and any conditions not fully indicated by the samples shall be specified by the inspector or the sampler of the linters in a written memorandum to the board which shall accompany the samples; and such samples shall be drawn in the following manner:

(a) **Condenser system linters.** Three layers shall be drawn from each head of each bale, each layer to be approximately 6 by 8 inches in size. The six layers in each such sample shall be considered in equal proportions as representative of the variations in quality in the bale from which drawn.

(b) **Flue system linters.** One sample shall be drawn from the top side of each bale and one from the bottom side (the surface layer shall not be included), which said samples, wrapped together and weighing not less than $\frac{1}{2}$ pound, shall constitute one sample for the purposes of §§ 28.136–28.146.*† [Reg. 15, sec. 1]

28.137 Boards of cotton linters examiners. There shall be located at Washington, D. C., and, when necessary in the opinion of the Chief of the Bureau, at any other point that he shall designate for the purpose, a board of cotton linters examiners. The members of all boards and the chairman of each shall be designated for the purpose by the Chief of the Bureau.*† [Reg. 15, sec. 2]

28.138 Requests for classification and comparison. For each lot or mark of linters which the applicant desires classified or compared separately he shall make a separate written request specifying which one of the following forms of service is desired:

(a) **Form A determination.** The informal classification or comparison, or both, of samples submitted for the purpose. Such informal classification or comparison shall be evidenced by a Form A memorandum which shall not be subject to review or repeal.

(b) **Form B determination.** The formal classification or comparison, or both, of samples submitted by mutual agreement of two or more parties to a dispute. The classification or comparison in such cases shall be evidenced by a Form B certificate which shall be subject to review as provided in § 28.140.

(c) **Form C determination.** The formal classification of bales of linters, to be sampled under the supervision of a supervisor of inspection. The classification in such cases shall be evidenced by a Form C certificate which shall be subject to review as provided in § 28.140.*† [Reg. 15, sec. 3]

28.139 Classification; filing of requests; variation. All requests for classification in the United States shall be filed with the secretary of the Board of Cotton Linters Examiners at Washington, D. C., or with the supervisor of inspection at the place where the linter is located.

Where in the classification of any bale of linters the variation in quality and/or color is found to be less than that embraced in any single grade, or greater than that of any standard grade but not greater than that of two adjacent grades, such linters shall be described in appropriate terms indicating the degree of variation in quality and/or color.*† [Reg. 15, sec. 4]

28.140 Reviews. One review only of the classification or comparison of any linters, evidenced by a Form B certificate or a Form C certificate, may be had in general conformity with §§ 28.58–28.69, which such review shall be handled by the Board of Cotton Linters Examiners at Washington, D. C.*† [Reg. 15, sec. 5]

28.141 Licensed classifiers. Subject, in general, to the terms and conditions of §§ 28.76–28.96, any person may, upon presentation of evidence of competency, be licensed to grade or classify linters and to certificate the grade or other class thereof in accordance with the official standards of the United States for American cotton linters.*† [Reg. 15, sec. 6]

28.142 Fees and costs. The provisions of §§ 28.118–28.135 relating to fees and costs shall, so far as applicable, apply to services performed with respect to linters, but the fee for the classification with respect to grade, character, and color, or for the comparison of any linters shall be at the rate of 20 cents for each bale or sample involved.*† [Reg. 15, sec. 7]

28.143 Fee for review. For the review of the classification or comparison of any linters the applicant shall pay a fee of 20 cents per bale.*† [Reg. 15, sec. 8]

28.144 Fee; examination of applicant for license; renewals. For the examination of an applicant for a license to classify linters the fee shall be \$10, but no additional charge shall be made for the issuance of a license to an applicant found to be properly qualified. For each renewal of such a license the fee shall be \$5.*† [Reg. 15, sec. 9]

28.145 Cost of practical forms; period effective. Practical forms of the official standards of the United States for American cotton linters will be furnished to any person, subject to the general terms and conditions specified in § 28.115 with respect to the practical forms of the official cotton standards of the United States, and upon prepayment of the costs thereof, which shall be at the rate of \$5 each, f. o. b. Washington, D. C., for shipments within the continental United States, and \$6.25 each, delivered to destination, for shipments outside the continental United States: Provided, That no practical form of any of the official standards of the United States for American cotton linters hereafter issued shall be considered as representing any of said standards after the date of its cancelation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification.*† [Reg. 15, sec. 10]

28.146 Expositor types. Three expositor types, illustrating the staples and characters of linters as embraced in each of the grades 1 to 6, inclusive, §§ 28.201–28.206, of the Official Standards of the United

*†For statutory and source citations, see note to § 28.1.

States for American Cotton Linters, will be supplied to each purchaser of copies of said official standards. To the extent that facilities permit, additional expositor types will be furnished to any such purchaser of copies of said standards, or to any other person, at the rate of \$1 each (\$3 for each grade, f. o. b. Washington, D. C., for shipment within the continental United States, and \$1.25 each (\$3.75 for each grade), delivered to destination, for shipment outside the continental United States.*† [Reg. 15, sec. 11]

ADJUSTMENT OF CONTRACT DISPUTES

28.147 Disputes involving contracts for shipment of cotton from United States. When an association or exchange located in a country other than the United States shall adopt any of the official cotton standards of the United States and when the members of the committee of such association or exchange having final jurisdiction in the matter of appeals have been designated as cotton examiners by the Chief of the Bureau, such committee may be constituted for the purposes of this Act a board of the Department of Agriculture and authorized to act as follows:

(a) Insofar as the exchange has adopted the universal standards the committee may pass upon the classification of cotton involved in a dispute between a party in the United States and a party without the United States to a contract made under the rules of the association or exchange.

(b) The submission of samples of cotton involved in such a dispute to such association or exchange or such committee in accordance with the rules of the association or exchange shall be deemed to be a submission to the Department of Agriculture.

(c) Determinations of classification made by the boards so constituted shall be final. When so provided in the articles, rules, or bylaws of the association or exchange, such determinations may be evidenced by awards. If an award is made which does not state the classification, such board will, upon request of the owner or custodian of the cotton and the payment of a reasonable additional fee, issue a certificate showing in detail the true classification for grade and color of such cotton, based upon a comparison of the samples with the universal standards or with a type or other samples on which the cotton has been sold, as the case may be.*† [Reg. 16, sec. 1]

28.148 Procedure. The manner of procedure in submitting and handling samples, in classification, and in instituting and conducting arbitrations and appeals shall be as prescribed in the articles, bylaws, and rules of the association or exchange.*† [Reg. 16, sec. 2]

PUBLICATIONS

28.149 Publication media. Publications under the Act and this subpart may be made in service and regulatory announcements of the Bureau and by such other means as the Chief of the Bureau shall from time to time designate for the purpose.*† [Reg. 17, sec. 1]

SUBPART—OFFICIAL STANDARDS OF THE UNITED STATES FOR
AMERICAN COTTON LINTERS

28.201 Grade 1. Grade 1 shall be American cotton linters which in grade is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Standard of the United States for American Cotton Linters, Grade 1."*† [Sec. 1]

†The source of §§ 28.201 to 28.211, inclusive, is Official standards of the United States for American cotton linters, Department of Agriculture, July 7, 1925. (SRA, BAE 94)

28.202 Grade 2. Grade 2 shall be American cotton linters, which in grade is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Standard of the United States for American Cotton Linters, Grade 2."*† [Sec. 2]

28.203 Grade 3. Grade 3 shall be American cotton linters, which in grade is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Standard of the United States for American Cotton Linters, Grade 3."*† [Sec. 3]

28.204 Grade 4. Grade 4 shall be American cotton linters, which in grade is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Standard of the United States for American Cotton Linters, Grade 4."*† [Sec. 4]

28.205 Grade 5. Grade 5 shall be American cotton linters, which in grade is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Standard of the United States for American Cotton Linters, Grade 5."*† [Sec. 5]

28.206 Grade 6. Grade 6 shall be American cotton linters, which in grade is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Standard of the United States for American Cotton Linters, Grade 6."*† [Sec. 6]

28.207 Grade 7. Grade 7 shall be American cotton linters, which in grade is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Standard of the United States for American Cotton Linters, Grade 7."*† [Sec. 7]

28.208 Hull fiber. American cotton linters the fiber of which is below that shown in grade 7 herein established shall be designated as "Hull fiber."*† [Sec. 8]

28.209 Compound grades. Bales of American cotton linters, which in grade show a variation equal to that shown in any two adjacent grades of those described in §§ 28.201–28.207, shall be designated by the compounded name of each of such two adjacent grades.*† [Sec. 9]

*For statutory citation, see note to § 28.1.

†For source citation, see note to § 28.201.

28.210 Mixed packed. Bales of American cotton linters, which in grade show a variation greater than that shown in any two adjacent grades of those described in §§ 28.201–28.207, shall be designated as “Mixed packed.”*† [Sec. 10]

28.211 Extraneous matter. American cotton linters that contain more foreign matter than is represented in the grades herein established shall be designated as “Off grades.”*† [Sec. 11]

SUBPART—STANDARDS FOR COLOR OF AMERICAN COTTON LINTERS

28.251 Color 1. Color 1 shall be the normal color of linters, for each sectional character, as embraced in the colors of the samples composing grade 1 of the original official standards of the United States for American cotton linters as established by the order signed by the Acting Secretary of Agriculture dated July 7, 1925, effective August 1, 1926.* [Sec. 1, Public Notice, Oct. 31, 1927, SRA, BAE 109, p. 8]

28.252 Color 2. Color 2 shall be the normal color of linters, for each sectional character, as embraced in the colors of the samples composing grade 2 of said official standards of the United States for American cotton linters.* [Sec. 2, Public Notice, Oct. 31, 1927, SRA, BAE 109, p. 8]

28.253 Color 3. Color 3 shall be the normal color of linters, for each sectional character, as embraced in the colors of the samples composing grade 3 of said official standards of the United States for American cotton linters.* [Sec. 3, Public Notice, Oct. 31, 1927, SRA, BAE 109, p. 8]

28.254 Color 4. Color 4 shall be the normal color of linters, for each sectional character, as embraced in the colors of the samples composing grade 4 of said official standards of the United States for American cotton linters.* [Sec. 4, Public Notice, Oct. 31, 1927, SRA, BAE 109, p. 8]

28.255 Color 5. Color 5 shall be the normal color of linters, for each sectional character, as embraced in the colors of the samples composing grade 5 of said official standards of the United States for American cotton linters.* [Sec. 5, Public Notice, Oct. 31, 1927, SRA, BAE 109, p. 8]

28.256 Color 6. Color 6 shall be the normal color of linters, for each sectional character, as embraced in the colors of the samples composing grade 6 of said official standards of the United States for American cotton linters.* [Sec. 6, Public Notice, Oct. 31, 1927, SRA, BAE 109, p. 8]

28.257 Color 7. Color 7 shall be the normal color of linters, for each sectional character, as embraced in the colors of the samples composing grade 7 of said official standards of the United States for American cotton linters.

Until their effective date, the foregoing standards may be used as tentative or permissive standards for color of American cotton linters.* [Sec. 7, Public Notice, Oct. 31, 1927, SRA, BAE 109, p. 8]

SUBPART—TENTATIVE STANDARDS FOR THE PREPARATION OF
LONG STAPLE COTTON

28.301 Set of samples; grade No. 4. The tentative standards for preparation of American upland long-staple cotton of the grade No. 4 or Strict Middling shall be the preparation of a set of samples in the custody of the United States Department of Agriculture, in the city of Washington, in containers marked, respectively:

A. Original Tentative Standard of the United States for A Preparation of Long-Staple American Upland cotton of the grade No. 4 or Strict Middling (otherwise designated as Preparation Type A for Strict Middling) as announced May 20, 1929.

B. Original Tentative Standard of the United States for B Preparation of Long-Staple American Upland cotton of the grade No. 5 or Middling (otherwise designated as Preparation Type B for Middling) as announced May 20, 1929.

C. Original Tentative Standard of the United States for C Preparation of Long-Staple American Upland cotton of the grade No. 4 or Strict Middling (otherwise designated as Preparation Type C for Strict Middling) as announced May 20, 1929.* [Public Notice, May 20, 1929, SRA, BAE 117, p. 14]

28.302 Set of samples; grade No. 5. The tentative standards for preparation of American upland long-staple cotton of the grade No. 5 or Middling shall be the preparation of a set of samples in the custody of the United States Department of Agriculture, in the city of Washington, in containers marked, respectively:

A. Original Tentative Standard of the United States for A Preparation of Long-Staple American Upland cotton of the Grade No. 5 or Middling (otherwise designated as Preparation Type A for Middling) as announced May 20, 1929.

B. Original Tentative Standard of the United States for B Preparation of Long-Staple American Upland cotton of the Grade No. 5 or Middling (otherwise designated as Preparation Type B for Middling) as announced May 20, 1929.

C. Original Tentative Standard of the United States for C Preparation of Long-Staple American Upland cotton of the Grade No. 5 or Middling (otherwise designated as Preparation Type C for Middling) as announced May 20, 1929.* [Public Notice, May 20, 1929, SRA, BAE 117, p. 14]

28.303 Set of samples; grade No. 6. The tentative standard for preparation of American upland long-staple cotton of the grade No. 6 or Strict Low Middling shall be the preparation of a set of samples in the custody of the United States Department of Agriculture, in the city of Washington, in containers marked, respectively:

A. Original Tentative Standard of the United States for A Preparation of Long-Staple American Upland cotton of the Grade No. 6 or Strict Low Middling (otherwise designated as Preparation Type A for Strict Low Middling) as announced May 20, 1929.

B. Original Tentative Standard of the United States for B Preparation of Long-Staple American Upland cotton of the Grade No.

*For statutory citation, see note to § 28.1.

6 or Strict Low Middling (otherwise designated as Preparation Type B for Strict Low Middling) as announced May 20, 1929.

C. Original Tentative Standard of the United States for C Preparation of Long-Staple American Upland cotton of the Grade No. 6 or Strict Low Middling (otherwise designated as Preparation Type C for Strict Low Middling) as announced May 20, 1929.* [Public Notice, May 20, 1929, SRA, BAE 117, p. 14]

28.304 Long-staple cotton; definition. The term long-staple cotton, as used herein, shall, until further notice, be construed to mean cotton which is $1\frac{1}{8}$ inches and above in length of staple.* [Public Notice, May 20, 1929, SRA, BAE 117, p. 15]

PART 29—TOBACCO INSPECTION

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CROSS REFERENCE

Tobacco Warehouses: See Part 103.

SUBPART A—REGULATIONS

DEFINITIONS

Section 29.1 Meaning of words. Words used in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 29.1 to 29.256, inclusive, issued under the authority contained in secs. 3, 14, 49 Stat. 732, 734; 7 U.S.C., Sup., 511b, 511m.

†The source of §§ 29.1 to 29.54, inclusive, (except for the amendments noted in the text,) is Rules and regulations of the Secretary of Agriculture under the Tobacco Inspection Act of August 23, 1935, Dec. 17, 1935, effective Jan. 2, 1936. (SRA, BAE 149)

29.2 Terms defined. For the purposes of this subpart, unless the context otherwise require, the following terms shall be construed respectively to mean—

(a) **The Act.** The Tobacco Inspection Act approved August 23, 1935 (49 Stat. 731; 7 U.S.C., Sup., Chapter 21A).

(b) **Secretary.** The Secretary or Acting Secretary of Agriculture of the United States.

(c) **Department.** The United States Department of Agriculture.

(d) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(e) **Chief of Bureau.** Chief of Bureau of Agricultural Economics.

(f) **Person.** Individual, association, partnership, or corporation.

(g) (1) **Inspector.** Person employed, licensed, or authorized by the Secretary to determine and certify the type, grade, condition, or other characteristics of tobacco.

(2) **Sampler.** Person employed, licensed, or authorized by the Secretary to select, tag, and seal official samples of tobacco.

(3) **Weigher.** Person employed, licensed, or authorized by the Secretary to weigh and certify the weight of tobacco.

(4) **Appeal inspector.** An inspector or other person designated or authorized by the Bureau to hear appeals under the Act and the regulations in this subpart.

(h) **Tobacco.** Tobacco in its unmanufactured forms as it appears between the time it is cured and stripped from the stalk, or primed and cured and the time it enters a manufacturing process. Conditioning, sweating, and stemming are not regarded as manufacturing processes.

(i) **Official standards.** Standard grades of tobacco promulgated by the Secretary under the Act.

(j) **Tentative standards.** Grades of tobacco authorized by the Chief of Bureau to be used pending promulgation by the Secretary.

(k) **Office of inspection.** A field office of the tobacco inspection service of the Bureau.

(l) **Certificate.** A certificate issued under the Act and the regulations in this subpart.

(m) **Interested party.** The owner or other financially interested person; including the warehouseman, commission merchant, association, and other person who has the tobacco in his custody for sale; the authorized agent of the owner; and persons to whom or by whom the tobacco has been sold on the basis of a certificate issued, or sample prepared, under the Act, but not including a person who is negotiating for its purpose.

(n) **Regulations.** Rules and regulations of the Secretary under the Act.

(o) **Package.** A hogshead, tierce, case, bale, or other securely enclosed parcel or bundle.

(p) **Lot.** A pile, basket, bulk, package, or other definite unit.

(q) **Identification number.** A number or a combination of letters and numbers in a design or mark approved by the Chief of Bureau, stamped, printed, or stenciled on a lot of tobacco or attached thereto by an inspector, sampler, or weigher for the purpose of identifying the lot covered by a certificate issued under the Act.

(r) **Official sample.** A sample selected, tagged, and sealed by an inspector or sampler under the Act.

(s) **Sample seal.** A seal approved by the Chief of Bureau for sealing official samples.

(t) **Lot seal.** A seal approved by the Chief of Bureau for sealing lots of tobacco certificated under the Act.

(u) **Auction market.** A place to which tobacco is delivered by the producers thereof, or their agents, for sale at auction through a warehouseman or commission merchant.

(v) **Designated market.** An auction market designated by the Secretary, under section 5 of the Act (49 Stat. 732; 7 U.S.C., Sup., 511d).

(w) **Public notice.** A proclamation by the Secretary under the Act (1) stating that an auction market is designated under the Act; (2) giving notice of such fact; (3) specifying a date when the requirement of inspection and certification under the Act shall become effective; and (4) released to the press, mailed to the tobacco board

of trade or warehouse association of such market, and mailed to the postmaster at such market for posting.

(x) Permissive inspection. Inspection authorized under section 6 of the Act (49 Stat. 732; 7 U.S.C., Sup., 511e).

(y) Mandatory inspection. Inspection authorized or required under section 5 of the Act (49 Stat. 732; 7 U.S.C., Sup., 511d).^{*†} [Reg. 1, sec. 2]

ADMINISTRATION

29.3 Chief of Bureau. The Chief of Bureau is charged with the supervision of the performance of all duties arising in the administration of the Act.^{*†} [Reg. 2, sec. 1]

PERMISSIVE INSPECTION

29.4 Procedure on request. Permissive inspection consists of inspecting, including sampling and weighing, and certificating tobacco upon the request of an interested party. Upon such request the Chief of Bureau may authorize and require an inspector, as a part of his duties, to supervise the preparation of tobacco to be inspected under the Act, including the sorting, handling, conditioning, or packing of such tobacco.^{*†} [Reg. 3, sec. 1]

29.5 Where inspection is offered; shipping points; official stations. (a) Tobacco may be inspected, sampled, or weighed for the purposes of the Act, upon request of an interested party, at points indicated in paragraphs (b), (c), and (d) of this section whenever official inspectors, samplers, or weighers are available and the tobacco is offered under conditions that permit of its proper examination.

(b) Points at which tobacco enters, or is offered for, interstate or foreign shipment, including packing houses, prizeries, warehouses, and other places where tobacco is handled, packed, or stored are shipping points.

(c) The stations or the headquarters of inspectors, samplers, or weighers. An official station may be any town, city, or place having a market, receiving station, or other facilities for handling, packing, or storing tobacco and where there is a sufficient volume of work to justify the stationing of an inspector, sampler, or weigher are official stations.

(d) Points near an official station, to the extent permitted by the time of the inspector, sampler, or weigher at such official station are "other points."^{*†} [Reg. 3, sec. 2, par. 1]

29.6 Who may obtain inspection. Inspection, sampling, or weighing as described in § 29.4 may be requested by an interested party, or his authorized agent, by filing an application in accordance with §§ 29.7, 29.8.^{*†} [Reg. 3, sec. 2, par. 2]

29.7 How to make application. Application for inspection, sampling, or weighing of tobacco shall be made to the Bureau, the office of inspection, or as the case may be, to an official inspector, sampler, or weigher. It may be made orally or in writing and delivered in person, by mail, by telegraph, or otherwise. If made orally,

^{*†}For statutory and source citations, see note to § 29.1.

the Bureau or the official receiving it may require a written confirmation.*† [Reg. 3, sec. 2, par. 3]

29.8 Form of application. Application for inspection, sampling, or weighing tobacco shall include the following information: (a) The date of the application; (b) the designation of the tobacco and the crop year of its production; (c) the name and post-office address of the applicant and of the person, if any, making the application as agent; (d) the financial interest of the applicant in the tobacco; (e) the exact nature of the service desired as (1) inspection, (2) inspection and sealing, (3) sampling, or (4) weighing; (f) a statement that the tobacco (1) is in commerce, as defined in the Act, or (2) is to be inspected, sampled, or weighed in connection with its entering such commerce; (g) if the tobacco has been officially inspected, sampled, or weighed previously, the application must have the previous certificate attached, or shown with respect to such previous service (1) by whom, (2) the date, (3) previous determinations as certificated; (h) the reason for requesting reinspection, resampling, or reweighing; and (i) such other necessary information as the Chief of Bureau may require.*† [Reg. 3, sec. 2, par. 4]

29.9 When application deemed filed. An application shall be deemed filed when delivered to the Bureau, the office of inspection, or according to the nature of the service requested, to an official inspector, sampler, or weigher. When an application is filed, the date and time of filing shall be recorded by the official receiving it.*† [Reg. 3, sec. 2, par. 5]

29.10 When application may be rejected. An application may be rejected (a) for noncompliance with the Act or the regulations in this subpart, or (b) when it is not practicable to provide the service. All expenses incurred in connection with an application rejected for noncompliance with the Act or the regulations in this subpart shall be paid by the applicant as provided in § 29.46 (d).*† [Reg. 3, sec. 2, par. 6]

29.11 When application may be withdrawn. An application may be withdrawn at any time before the requested service is rendered upon payment of expenses incurred in connection therewith as provided in § 29.46(d).*† [Reg. 3, sec. 2, par. 7]

29.12 Authority of agent. Proof of authority of any person making an application as agent may be required in the discretion of the official receiving the application.*† [Reg. 3, sec. 2, par. 8]

29.13 Accessibility of tobacco. All tobacco to be inspected, sampled, or weighed upon application shall be made accessible by the applicant for proper examination, including any necessary display in proper light for determination of grade or other characteristics or for drawing of samples. In the case of tobacco in packages, the coverings shall be removed by the applicant in such manner as may be prescribed by the inspector, sampler, or weigher.*† [Reg. 3, sec. 2, par. 9]

29.14 Certificates—(a) Form. Each certificate issued under §§ 29.4–29.17 shall (1) show that it was issued under the Tobacco Inspection Act; (2) be in a form approved for the purpose by the Chief

of Bureau; and (3) embody within its written or printed terms, with respect to the particular kind of service, all applicable information required by paragraphs (b), (c), (d), (e), and (f) of this section. Each certificate may also contain any information, not inconsistent with the Act and the regulations in this subpart, as may be approved or required by the Chief of Bureau. The Chief of Bureau may, in his discretion, specify or limit the period in which a certificate shall be valid.

(b) Inspection certificate. Each inspection certificate shall show (1) the caption "Tobacco Inspection Certificate"; (2) whether it is an original, first, second, or other copy; (3) the number of the certificate; (4) the identification number and private identification marks on the lot; (5) the date and number of the official sample, if any; (6) the location of the tobacco at the time of inspection or sampling; (7) the date of inspection; (8) the type and grade of the tobacco; (9) the kind of lot or package; and (10) the signature of the official inspector; also such additional information as may be required by the Chief of Bureau. An inspection certificate covering a package of tobacco shall also show the form and condition of the tobacco.

(c) Sample inspection certificate. Each sample inspection certificate shall carry the caption "Tobacco Sample Inspection Certificate" and shall otherwise comply with the requirements of an inspection certificate, and in addition include a clearly worded statement that the type, grade, or other tobacco characteristics, shown therein, apply only to the tobacco contained in the sample inspected.

(d) Weight certificate. Each weight certificate shall show (1) the caption "Tobacco Weight Certificate"; (2) whether it is an original, first, second, or other copy; (3) the number of the certificate; (4) the identification number or private identification marks on the lot; (5) the location of the tobacco at the time of weighing; (6) the date of weighing; (7) the weight of each lot; (8) the kind of lot or package; and (9) the signature of the official weigher.

(e) Official sample tag. Each official sample drawn and prepared shall have attached thereto, a certificate or tag showing (1) the caption "Official Tobacco Sample"; (2) the date of sampling; (3) the location of the tobacco at the time of sampling; (4) the kind of lot or package; (5) the condition of the tobacco; (6) the identification number and private identification marks on the lot; and (7) when a lot is found to be damaged, nested, or in doubtful keeping order, a statement of such fact.

(f) Combination certificate. A combination certificate of inspection and weight may be issued under the Act, if such certificate carries the caption "Tobacco Inspection and Weight Certificate" and otherwise meets all of the requirements of paragraphs (b) and (d) of this section.*† [Reg. 3, sec. 2, par. 10]

CROSS REFERENCE: For inspection, grade, weight, and combined certificates issued under the United States Warehouse Act, see §§ 103.57–103.61.

29.15 Disposition of certificates. When a certificate of inspection or weight is issued under the Act upon the request of an interested party, the original certificate and two copies shall be delivered or

*†For statutory and source citations, see note to § 29.1.

mailed to the applicant or a person designated by him, and one copy shall be mailed or delivered to the Bureau or local office of inspection. Charges may be made for additional copies furnished the interested party upon request as provided in § 29.49.*† [Reg. 3, sec. 2, par. 11]

CROSS REFERENCE: For issuance of certificate for tobacco to be stored in a licensed warehouse, see § 103.61.

29.16 Advance information. Upon the request of an applicant for whom tobacco has been inspected, sampled, or weighed and certificated under the Act, all or any part of the contents of such certificate may be telegraphed or telephoned to him at his expense. Information relative to grade or other determinations contained or to be contained in a certificate shall not be divulged by an inspector, sampler, or weigher to any person other than an interested party or his agent without the approval of the Chief of Bureau, and such information shall not be furnished an interested party before the certificate is issued.*† [Reg. 3, sec. 2, par. 12]

29.17 Weighing apparatus. A scale used for determination of weight to be certificated under the Act shall be subject to examination for accuracy according to the regulations of the State or municipality in which located. No disapproved scale shall be used to determine weight of tobacco for the purposes of the Act and the regulations in this subpart.*† [Reg. 3, sec. 2, par. 13]

MANDATORY INSPECTION

29.18 Definition. Mandatory inspection consists of inspecting and certifying tobacco under the Act on designated markets before it is offered for sale at auction and the announcement of certified grades in the auction.*† [Reg. 4, sec. 1]

29.19 Where mandatory inspection is required. All tobacco offered for sale at auction on a market designated in accordance with the Act and § 29.20 shall be inspected and certificated under the Act upon the date specified by the Secretary in public notice of such designation, and thereafter, except when the requirement of such inspection and certification is temporarily suspended by the Chief of Bureau in accordance with the Act and the regulations in this subpart.*† [Reg. 4, sec. 2]

29.20 Designation of markets. An auction market where tobacco bought or sold thereon at auction or the products customarily manufactured therefrom move in commerce may be designated under the Act by the Secretary after the Chief of Bureau has advised the Secretary that two-thirds of the growers voting in the referendum held in accordance with § 29.21 favored the designation of such market. When a market is designated by the Secretary, he shall give public notice of the fact and in such public notice he shall specify the date on which the requirement of inspection and certification of tobacco sold at auction on such market shall become effective. The Chief of Bureau may temporarily suspend the requirement of inspection and certification on a designated market when it is found impracticable to provide such service because competent inspectors are not

obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service.*† [Reg. 4, sec. 3]

CROSS REFERENCE: For orders of designation of tobacco markets, see § 29.301.

29.21 Growers' referendum—(a) Method of conducting. Any referendum held as provided in section 5 of the Act (49 Stat. 732; 7 U.S.C., Sup., 511d) shall be conducted by the Bureau in accordance with this section. The Chief of Bureau shall determine (1) the market or group of markets to be covered by a referendum; (2) when a referendum is to be held; and (3) the period during which growers, entitled to vote therein, may cast their ballots. When a referendum is held for a group of markets, the result of such referendum may be construed to apply either individually or collectively to such markets. Before holding a referendum, the Bureau shall establish from the records of the collectors of internal revenue for the preceding marketing season, or in the absence of such records then from such other reliable sources of information as are available, a list showing the names of all growers who are entitled to vote in the referendum, and from the list so established the eligibility of growers to vote in a referendum shall be determined by the Bureau: Provided, That if a grower, whose name appears on such lists for two or more markets selling the same class of tobacco, votes in one referendum for a market selling such class, he shall not be eligible to vote in a referendum for any other market selling such class.

(b) Form of ballot. Ballots to be used for voting in a referendum held under the Act shall be in a form approved for the purpose by the Chief of Bureau.

(c) Distribution of ballots. Ballots to be used by growers in a referendum under the Act may be distributed by mail or through representatives of the Bureau as the Chief of Bureau may select. The Chief of Bureau may establish and publish a list of voting places for the purpose of any referendum and distribute ballots therefrom. When ballots are not mailed directly to growers who are entitled to vote, insofar as their addresses are known, the Chief of Bureau shall announce the voting places at which ballots can be secured, and copies of such announcement shall be given to the press and mailed, for posting and distribution, to the post offices of the market or group of markets covered by the referendum and to post offices in the vicinity of such markets or group of markets. Any explanatory statement with reference to a referendum, provisions of the Act and this subpart, or the operation and benefits of the services authorized by the Act may be attached to or supplied with ballots.

(d) Filing and tabulation of votes. Each ballot, when filled in and signed by a grower entitled to vote in a referendum, shall be mailed or delivered by him as specified in the ballot. Persons authorized by the Chief of Bureau to receive votes in any referendum shall promptly file all votes received or collected by them with the Bureau. All ballots filed in a referendum shall be examined to verify the eligibility of the voter and the Chief of Bureau shall have compiled the result of the referendum and furnish the Secretary a statement showing whether or not two-thirds of the growers voting favored

*†For statutory and source citations, see note to § 29.1.

the designation of the market or group of markets covered by the referendum. In verifying votes, ballots which do not show the desire of the voter, or ballots which are defective or illegible, or ballots on which the signature or other identification does not correspond with the established list shall not be counted. The choice of any individual voter shall not be divulged by any official of the Bureau, except to the Secretary when requested. Votes, ballots, and other documents pertaining to a referendum shall be preserved in the Bureau for a period of 2 years from the closing date of such referendum, and may be destroyed thereafter.* [Reg. 4, sec. 4, SRA, BAE 149, rev., Dec. 17, 1935, as amended Nov. 5, 1937]

29.22 Accessibility of tobacco. All tobacco subject to mandatory inspection on a designated market shall be made readily accessible for inspection.*† [Reg. 4, sec. 5]

29.23 Mandatory inspection ticket. A mandatory inspection ticket shall consist of an inspection certificate made and issued in combination with an auction warehouse ticket in a form approved by the Chief of Bureau.*† [Reg. 4, sec. 6]

CROSS REFERENCE: For inspection certificates issued under the United States Warehouse Act, see § 103.57.

29.24 Warehousemen to provide tickets. A mandatory inspection ticket, in the form required by § 29.23, shall be provided by each auction warehouseman on a designated market to cover each lot of tobacco offered for sale at auction by him on such market.*† [Reg. 4, sec. 7]

29.25 Changes or alterations. No change or alteration shall be made in the weight or other identification of the lot, on a mandatory inspection ticket after the certification of type and grade by an official inspector, and any such change or alteration shall constitute and be construed as a change or alteration in the certificate issued or authorized under the Act.*† [Reg. 4, sec. 8]

29.26 Disposition of ticket. One copy of the mandatory inspection ticket shall be attached to, or placed on, the tobacco certificated as a further identification of the lot and all copies of such ticket shall become null and void when such identifying copy is removed from the lot. One copy of such ticket, showing (a) the certification of type and grade; (b) the weight and other identification; and (c) the details of the sale at auction, shall be delivered by the warehouseman to the Bureau or the local head inspector.*† [Reg. 4, sec. 9]

29.27 Announcing grades. The grade of each lot of tobacco as certified by an official inspector on a designated market shall be clearly announced at the time the lot is offered in the auction.*† [Reg. 4, sec. 10]

APPEAL

29.28 When appeal may be taken. Whenever an interested party believes that a certificate issued or a sample prepared under the Act is not correct he may file an appeal: Provided, That (a) the period for which such certificate was issued or sample was prepared, if any specified, has not expired; (b) all tobacco covered by such

certificate or sample is accessible to an appeal inspector for making a proper reinspection, resampling, or reweighing, and can be definitely identified by him as the tobacco covered by such certificate or sample; and (c) the tobacco has not deteriorated or undergone any material change.*† [Reg. 5, sec. 1]

29.29 How to obtain an appeal. An appeal shall be made in writing, and filed with the Bureau or the office of inspection for the type of tobacco involved. Such appeal shall show: (a) the date; (b) the name and post office address of the appellant and of the person, if any, making the appeal in his behalf; (c) the financial interest of the appellant in the tobacco; (d) the reasons for making the appeal; and such other information as may be required by the Chief of Bureau. The appeal shall be accompanied by the certificate or sample from which the appeal is taken, unless such requirement is waived by the Bureau when it is impracticable for the appellant to furnish such certificate. The appeal inspector may require the appellant to furnish any other relevant and necessary information for the proper consideration of the appeal.*† [Reg. 5, sec. 2]

29.30 Record of filing time. When an appeal is filed, the date and time of filing shall be recorded by the officer receiving it.*† [Reg. 5, sec. 3]

29.31 When appeal may be refused. If it shall appear that the reasons stated in an appeal are frivolous or unsubstantial or that the Act or the regulations in this subpart have not been complied with, the appeal may be denied or dismissed. When an appeal is denied or dismissed, the appeal inspector shall (a) notify the appellant by telegraph or in writing giving the reason for such denial or dismissal; (b) mail a copy of such notification to the Bureau; and (c) return or release to the appellant, or other person designated by him, any certificate or sample which was filed with the appeal. All expenses incurred in connection with an appeal prior to its refusal or dismissal shall be paid by the appellant, as provided in § 29.47 (b).*† [Reg. 5, sec. 4]

29.32 When appeal may be withdrawn. An appeal may be withdrawn by the appellant at any time before an appeal certificate is issued or an appeal sample is prepared, upon the payment of any expenses incurred in connection with the appeal as provided in § 29.47 (b).*† [Reg. 5, sec. 5]

29.33 Review or second inspection not an appeal. A review or investigation made in accordance with § 29.53, or a second inspection, sampling, or weighing made upon the request of an interested party for the purpose of securing new or later information when the correctness of an old certificate or sample is not questioned, shall not be considered an appeal.*† [Reg. 5, sec. 6]

29.34 Order in which made. Appeals shall be heard and passed upon, so far as practicable, in the order in which they are filed.*† [Reg. 5, sec. 7]

29.35 Who shall pass upon appeals. Appeals shall be passed upon by an appeal inspector designated for the purpose by the Chief of Bureau. When authorized, by the Chief of Bureau, two or more

*†For statutory and source citations, see note to § 29.1.

appeal inspectors may jointly pass upon an appeal. The Bureau may authorize an inspector, supervising inspector, or other person to act as an appeal inspector, but no appeal inspector shall pass upon an appeal involving the correctness of a certificate issued or sample prepared by him.*† [Reg. 5, sec. 8]

29.36 Appeal findings. Immediately after an appeal has been heard and the tobacco involved therein has been re-examined, an appeal certificate shall be issued or an appeal sample prepared by the appeal inspector. Such certificate or sample shall show the finding of the appeal inspector and shall be labeled "Appeal Certificate" or "Appeal Sample", as the case may be, over the signature of the appeal inspector. An appeal certificate or sample shall supersede all other certificates or samples for the same lot of tobacco and shall refer specifically to the certificate or sample from which the appeal was made. In all other respects the provisions of this subpart relative to certificates or samples shall apply to an appeal certificate or sample. The findings of the appeal inspector as certificated shall be final, unless the Chief of Bureau shall direct a review of such findings.*† [Reg. 5, sec. 9]

29.37 Superseded certificate or sample. When superseded under this subpart by an appeal certificate or an appeal sample, such superseded certificate or sample shall become null and void and shall not thereafter be used to represent the tobacco described therein. If the original and the copies of the old certificate were not delivered to the appeal inspector for cancelation, the appeal inspector shall notify such persons or firms as he may consider necessary to prevent fraudulent use of any such null and void certificate.*† [Reg. 5, sec. 10]

INSPECTORS, SAMPLERS, AND WEIGHERS

29.38 Who may be employed, licensed, or authorized as inspectors, samplers, and weighers. Any person who is not financially interested directly or indirectly in merchandising tobacco, except as a grower or except in disposing of tobacco previously acquired, and who has demonstrated his competency may be employed, licensed, or authorized to inspect, sample, or weigh tobacco. Licenses issued by the Secretary shall be countersigned by a supervising official of the Bureau. Licenses to inspect or to sample shall specify the type or types of tobacco which the licensee is authorized to inspect or sample.*† [Reg. 6, sec. 1]

CROSS REFERENCE: For samplers, inspectors, graders, and weighers of tobacco, United States Warehouse Act, see §§ 103.52-103.55.

29.39 Order of providing service. When tobacco is to be inspected, sampled, or weighed upon request, such services shall be rendered as far as practicable in the order in which applications were received. In conducting mandatory inspection, the inspection shall start at the beginning of the "break" in the auction warehouse where the sale is scheduled to start and the inspection shall continue in the order of sale on each warehouse floor and from warehouse to warehouse.*† [Reg. 6, sec. 2]

29.40 Certificate issuance. A certificate shall be issued as soon as practicable after any tobacco has been inspected or weighed for the purpose of the Act. A separate certificate shall be issued for each lot of tobacco inspected or weighed, except when a certificate covering two or more lots is specifically authorized by the Chief of Bureau. In case of a lost or destroyed certificate, a duplicate thereof may be issued under the same number, date, and name by an authorized supervising official. Any such duplicate certificate shall be plainly marked "Duplicate" above the signature of the supervising official who issued it.*† [Reg. 6, sec. 3]

29.41 Inspection determinations. The determination of type, grade, size, form, condition, or other tobacco characteristics shall be based upon a thorough examination of the lot of tobacco to be certificated or an official sample of such lot. The certification of a lot of tobacco shall be a true representation of the lot, or of the official sample, at the time of inspection.*† [Reg. 6, sec. 4]

29.42 Method of sampling. In sampling tobacco under the Act, at least three breaks shall be made at different points in the lot, and in the discretion of the sampler as many more breaks shall be made as seem necessary to show the range of the entire lot. From the breaks so made tobacco to be used in the official sample shall be selected. The official sample shall, so far as practicable, include tobacco of each quality, color, length, and other characteristics found in the lot in such proportions as would truly represent the lot. In case a lot is found to be damaged, nested, or in doubtful keeping order, the official sample tag shall be so marked. Official sample tags shall be attached to the sample, in a manner prescribed by the Chief of Bureau, and shall be sealed thereon with an official sample seal approved for the purpose by the Chief of Bureau.*† [Reg. 6, sec. 5]

29.43 Weight determinations. Daily before weighing any tobacco for the purposes of the Act, a weigher shall verify the accuracy of the scales to be used by him. Except as may be otherwise specified by the Chief of Bureau, all weights certificated shall be within an accuracy of 1 pound.*† [Reg. 6, sec. 6]

29.44 Proper light. Tobacco shall not be inspected or sampled for the purposes of the Act except when displayed in proper light for correct determination of grade or other characteristics of tobacco. No tobacco shall be inspected or sampled for the purposes of the Act in the direct rays of the sun or by any artificial light which does not permit the inspector correctly to determine the grade or other characteristics of tobacco.*† [Reg. 6, sec. 7]

29.45 Suspension and termination. The license of an inspector, sampler, or weigher may be suspended, pending final action by the Secretary, by any official authorized to countersign licenses whenever he considers such action to be for the best interest of the service. The designation of an appeal inspector may be withdrawn at any time by the Bureau. Before the license of an inspector, sampler, or weigher is terminated or revoked pursuant to the Act and the regulations in this subpart, such appointee or licensee shall be furnished by the Secretary, or his designated representative, with a written

*†For statutory and source citations, see note to § 29.1.

statement specifying the charges, and within 7 days after his suspension, the licensee may file an appeal in writing with the Secretary supported by any evidence he may wish to offer in connection therewith.*† [Reg. 6, sec. 8]

FEES AND CHARGES

29.46 Determination of fees and charges. Fees or charges for permissive inspection performed under the Act shall be fixed and paid in accordance with §§ 29.46–29.50.

(a) For inspection. Fees or charges for inspecting, sampling, weighing, or sealing, upon the request of any interested party, shall be fixed by the Chief of Bureau, in accordance with paragraphs (b), (c), and (d) of this section and in amounts which are deemed reasonable under the circumstances.

(b) Under cooperative agreement. Fees or charges for inspecting, sampling, weighing, or sealing, and supervision in connection therewith, under a cooperative agreement with other branches of the Government, State agencies, or other organizations or persons shall be in accordance with such agreement.

(c) Direct service. Fees or charges for inspecting, sampling, weighing, or sealing, when done independently by the Bureau, shall be fixed according to the nature of the service and the conditions under which the service is rendered. Charges may, in addition to a fee, include the expenses of the inspector, sampler, or weigher for travel and subsistence and other necessary expenses involved in rendering the service requested.

(d) When application rejected or withdrawn. When an application for inspection, sampling, or weighing is rejected in accordance with § 29.10, or withdrawn in accordance with § 29.11, the applicant may be required to pay a reasonable charge for the time used by an inspector, sampler, or weigher and other expenses incurred in connection with such application prior to its rejection or withdrawal.*† [Reg. 7, sec. 1]

29.47 Appeals—(a) Charge for appeals. A charge of \$1 shall be made for each appeal filed under §§ 29.28–29.37 and the fee for an appeal inspection, sampling, or weighing shall equal the fee for the original inspection, sampling, or weighing from which the appeal is taken, plus any charges for travel or other expenses incurred in hearing the appeal: Provided, That when a material error in the certificate or sample from which the appeal is taken is found by the appeal inspector, the charge and fee shall be waived.

(b) When appeal refused or withdrawn. When an appeal is refused in accordance with § 29.31, or withdrawn in accordance with § 29.32, the appellant may be required to pay a reasonable charge for the time used by the appeal inspector and other expenses incurred in connection with such appeal prior to its denial, dismissal, or withdrawal.*† [Reg. 7, sec. 2]

29.48 For demonstrations. Charges, not in excess of the cost thereof, as may be approved by the Chief of Bureau, may be made for demonstrations or samples when such demonstrations or samples are furnished upon request.*† [Reg. 7, sec. 3]

29.49 For certificates. A charge may be made, in the discretion of the Chief of Bureau, for copies of certificates other than those required to be distributed in § 29.15, and for the issuance of a duplicate certificate in accordance with § 29.40.*† [Reg. 7, sec. 4]

29.50 Payment; procedure. Fees and charges fixed in accordance with §§ 29.46–29.50 shall be paid by the applicant or person obtaining the service in accordance with the statement rendered by the Bureau. A deposit to cover all, or a part of, fees and charges for services to be rendered may be required by the Bureau. Fees for services rendered independently by the Bureau, shall be remitted by check or draft made payable to the United States Department of Agriculture.*† [Reg. 7, sec. 5]

MISCELLANEOUS

29.51 Publications. Publications under the Act and the regulations in this subpart shall be made in service and regulatory announcements of the Bureau and such other mediums as the Chief of Bureau may from time to time designate for the purpose.*† [Reg. 8, sec. 1]

29.52 Political activity. Persons employed, licensed, or authorized under the Act are forbidden, during the period of their appointment, license, or authorization, to take any active part in political management or in political campaigns. Political activity in city, county, State, or national election, whether primary or regular, or in behalf of any party or candidate is prohibited. This applies to all appointees, including temporary and cooperative employees, and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for terminating or withdrawing an appointment, license, or authorization.*† [Reg. 8, sec. 2]

29.53 Bureau investigations. An inspector, sampler, or weigher, when authorized by the Bureau, may of his own initiative, or upon the request of an interested party, review for the purpose of verification or confirmation any tobacco which he has certificated, and any supervising official may review the work of any inspector, sampler, or weigher: Provided, That such review shall not be made if the ownership of the tobacco involved has changed since the date of certification, unless there is intimation or evidence of deterioration or of irregularities or fraud in connection with the certification or sampling. When such review discloses an error in the certification, the inspector, sampler, or weigher concerned, or supervising official shall immediately correct the error by making an appropriate change in the certificate or by canceling the certificate and issuing a new certificate in lieu thereof. Any correction made on a certificate shall be initialed by the issuing official or by the supervising official. When a new certificate is issued for a lot of tobacco, the old certificate and copies thereof shall become null and void and shall not thereafter be used to represent the tobacco described therein.*† [Reg. 8, sec. 3]

29.54 Identification number. The Chief of Bureau may require the use of official identification numbers in connection with tobacco certificated or sampled under the Act. When identification numbers

*†For statutory and source citations, see note to § 29.1.

are required, they shall be specified by the Chief of Bureau and shall be attached to, or stamped, printed, or stenciled on, the lots of tobacco certificated or sampled, in a manner specified by the Chief of Bureau.*† [Reg. 8, sec. 4]

SUBPART—OFFICIAL STANDARD GRADES FOR FIRE-CURED TOBACCO
(U. S. TYPES 21, 22, 23, 24)

29.101 Wrapper grades (A group). General specifications. All grades of the A-group must be clean, sound, ripe, firm, and strong; must have an open tissue, bright finish, and small to medium size and blending fibers. General tolerance, 5% injury of a nature affecting wrapper yield.

U. S. Grade	GRADE DESCRIPTION AND SPECIFICATIONS
A1F	Choice Quality Wrapper in Brown Color. Very silky, very fine texture, very elastic, very oily, thin to medium body, broad, over 20'' long, uniform. Tolerance, 10% leaves of a quality not lower than B2 or C2.
A1D	Choice Quality Wrapper in Dark Color. Rich in oil, heavy body, otherwise same as A1F.
A2F	Fine Quality Wrapper in Brown Color. Silky, fine texture, elastic, very oily, thin to medium body, spready, over 20'' long, harmonizing. Tolerance, 20% leaves of a quality not lower than B3 or C3.
A2D	Fine Quality Wrapper in Dark Color. Rich in oil, heavy body, otherwise same as A2F.
A3F	Good Quality Wrapper in Brown Color. Very smooth, good texture, elastic, oily, thin to medium body, normal width, over 16'' long, unmingled. Tolerance, 40% leaves of a quality not lower than B3 or C3.
A3D	Good Quality Wrapper in Dark Color. Heavy body, otherwise same as A3F.

*†† [p. 1]

††The source of §§ 29.101 to 29.107, inclusive, is Official standard grades for Fire-cured tobacco, Department of Agriculture, May 14, 1936.

29.102 Heavy leaf grades (B group). General specifications. All grades of the B-group must be clean, sound, and medium to heavy body. B1 and B2 qualities must be smooth and very oily, and must have an open tissue, good texture, medium size, and blending fibers.

U. S. Grade	GRADE DESCRIPTION AND SPECIFICATIONS
B1F	Choice Quality Stouts in Brown Color. Fairly elastic, ripe, firm, strong, spready, very clear finish, over 20'' long, uniform. Tolerance, 5% injury and 10% leaves of the quality of B3, C3, or better. Choice Quality Stouts in Dark Color. Rich in oil, heavy body, otherwise same as B1F.
B2D	Fine Quality Stouts in Brown Color. Stretchy, ripe, firm, strong, normal width, clear finish, over 16'' long, harmonizing. Tolerance, 10% injury and 20% leaves the quality of B3, C3, or better. Fine Quality Stouts in Dark Color. Rich in oil, heavy body, otherwise same as B2F.

U. S.
Grade

B3F	Good Quality Stouts in Brown Color. Fairly smooth, fair texture, stretchy, oily, ripe, firm, strong, not stringy, normal finish, unmingled, Tolerance, 15% injury and 5% Lugs the quality of X2 or better.
B3D	Good Quality Stouts in Dark Color. Very oily, heavy body, otherwise same as B3F.
B3M	Good Quality Stouts Mixed in Color or Quality. Mixed tobacco of an average quality of B3 or better.
B3G	Good Quality Stouts in Green Color. Quality of B3 or better, containing 20% or more green.
B4F	Fair Quality Stouts in Brown Color. Not rough, fairly oily, fairly ripe, fairly firm, normal strength, un-mixed. Tolerance, 20% injury, and 10% Lugs the quality of X3 or better.
B4D	Fair Quality Stouts in Dark Color. Heavy body, otherwise same as B4F.
B4M	Fair Quality Stouts Mixed in Color or Quality. Mixed tobacco of an average quality of B4.
B4G	Fair Quality Stouts in Green Color. Quality of B4, containing 20% or more green.
B5F	Common Quality Stouts in Brown Color. Tolerance, 40% injury and 25% Lugs the quality of X3 or better.
B5D	Common Quality Stouts in Dark Color. Tolerance same as B5F.
B5G	Common Quality Stouts in Green Color. Quality of B5, containing 20% or more green.

*† [pp. 1-2]

29.103 Thin leaf grades (C-group). General specifications. All grades of the C-group must be clean, sound, and of thin to medium body. C1 and C2 qualities must be very smooth and oily, must have good texture, small to medium size and blending fibers.

U. S.
Grade

GRADE DESCRIPTION AND SPECIFICATIONS

C1L	Choice Quality Thins in Light Color. Fairly elastic, ripe, firm, strong, spready, very clear finish, over 20'' long, uniform. Tolerance, 5% injury and 10% leaves the quality of C3, B3, or better.
C1F	Choice Quality Thins in Brown Color. Specifications same as C1L.
C2L	Fine Quality Thins in Light Color. Fairly stretchy, ripe, firm, strong, normal width, clear finish, over 16'' long, harmonizing. Tolerance, 10% injury and 20% leaves the quality of C3, B3, or better.
C2F	Fine Quality Thins in Brown Color. Specifications same as C2L.
C2D	Fine Quality Thins in Dark Color. Specifications same as C2L.
C3L	Good Quality Thins in Light Color. Smooth, fairly oily, fairly ripe, firm, strong, not stringy, normal finish, unmingled. Tolerance, 15% injury and 5% Lugs the quality of X2 or better.
C3F	Good Quality Thins in Brown Color. Specifications same as C3L.
C3D	Good Quality Thins in Dark Color. Specifications same as C3L.
C3M	Good Quality Thins Mixed in Color or Quality. Mixed tobacco of an average quality of C3 or better.

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.101.

U. S.
Grade

C3G	Good Quality Thins in Pale Green Color. Quality of C3 or better, containing 20% or more green.
C4L	Fair Quality Thins in Light Color. Not coarse, lean, fairly ripe, normal strength, unmixed. Tolerance, 20% injury and 10% Lugs the quality of X3 or better.
C4F	Fair Quality Thins in Brown Color. Specifications same as C4L.
C4D	Fair quality Thins in Dark Color. Specifications same as C4L.
C4M	Fair Quality Thins Mixed in Color or Quality. Mixed tobacco of an average quality of C4.
C4G	Fair Quality Thins in Pale Green Color. Quality of C4, containing 20% or more green.
C5L	Common Quality Thins in Light Color. Tolerance, 40% injury and 25% Lugs the quality of X3 or better.
C5F	Common Quality Thins in Brown Color. Tolerance same as C5L.
C5D	Common Quality Thins in Dark Color. Tolerance same as C5L.
C5G	Common Quality Thins in Pale Green Color. Quality of C5, containing 20% or more green.

*† [pp. 2-3]

29.104 Lug grades (X-group). General specifications: All grades of the X-group must be sound and normally free of dirt and other foreign matter.

U. S.
Grade

GRADE DESCRIPTION AND SPECIFICATIONS

X1L	Choice Quality Lugs in Light Color. Fairly smooth, oily, very ripe. thin to medium body, strong, harmonizing.
X1F	Choice Quality Lugs in Brown Color. Medium to heavy body, otherwise same as X1L.
X1D	Choice Quality Lugs in Dark Color. Heavy body, otherwise same as X1L.
X2L	Fine Quality Lugs in Light Color. Not coarse, fairly oily, ripe, thin to medium body, fairly strong, unmingled.
X2F	Fine Quality Lugs in Brown Color. Medium to heavy body, otherwise same as X2L.
X2D	Fine Quality Lugs in Dark Color. Heavy body, otherwise same as X2L.
X3L	Good Quality Lugs in Light Color. Not coarse, fairly ripe, thin to medium body, normal strength, unmixed. Tolerance, 10% dead and trashy leaves.
X3F	Good Quality Lugs in Brown Color. Medium to heavy body, otherwise same as X3L.
X3D	Good Quality Lugs in Dark Color. Fairly heavy body, otherwise same as X3L.
X3M	Good Quality Mixed Lugs. Heavy mixed Lugs of an average quality of X3 or better.
X3G	Good Quality Lugs in Dark Green Color. Heavy bodied Lugs the quality of X3 or better. containing 20% or more green.
X4L	Fair Quality Lugs in Light Color. Not Tender, unmixed. Tolerance. 20% dead and trashy leaves.
X4F	Fair Quality Lugs in Brown Color. Specifications same as X4L.
X4D	Fair Quality Lugs in Dark Color. Specifications same as X4L.

U. S.
Grade

X4M	Fair Quality Mixed Lugs. Medium bodied mixed Lugs of an average quality of X4.
X4G	Fair Quality Green Lugs. Medium bodied Lugs the quality of X4, containing 20% or more green.
X5L	Common Quality Lugs in Light Color. Tolerance, 40% dead and trashy leaves.
X5F	Common Quality Lugs in Brown Color. Specifications same as X5L.
X5D	Common Quality Lugs in Dark Color. Tolerance same as X5L.
X5G	Common Quality Green Lugs. Quality of X5, containing 20% or more green.

*† [pp. 3-4]

29.105 Nondescript and scrap (N- & S-groups).

U. S.
Grade

GRADE DESCRIPTION AND SPECIFICATIONS

N	Nondescript, as defined.
S	Scrap, as defined.

*† [p. 4]

29.106 Terms defined. For the purpose of these official standard grades, the following terms shall be construed, respectively, to mean:

(a) **Airdried.** The condition of unfermented tobacco as customarily prepared for storage under natural atmospheric conditions.

(b) **Body.** The thickness of a leaf or weight per unit of surface.

(c) **Class.** A major division of tobacco based on characteristics caused by varieties, soils, or climatic conditions, and the methods of cultivation, harvesting, or curing.

(d) **Clean.** Normally free of dirt and other foreign matter.

(e) **Condition.** The state of tobacco in storage, or in relation to its preparation for storage, with reference to its manner of preparation or its degree of fermentation, such as Undried, Airdried, Steam-dried, Sweating, Sweated, and Resweated.

(f) **Crude.** Very immature or the lowest degree of maturity. Any tobacco of which 50 percent or more of its surface has a positive green color is crude.

(g) **Cured.** Tobacco dried of its sap by either natural or artificial processes.

(h) **Damage.** The effect of mold, must, rot, black-rot, or other fungous or bacterial diseases which attack tobacco in its cured state, including tobacco having the odor of mold, must, or rot.

(i) **Fire-cured.** Tobacco cured under artificial atmospheric conditions by the use of open fires from which the smoke and fumes of burning wood are partly absorbed by the tobacco.

(j) **Foreign matter.** Any substance or material extraneous to tobacco, including dirt, sand, stalks, suckers, straw, strings, et cetera.

(k) **Form.** The stage of preparation of tobacco, such as Unstemmed and Stemmed.

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.101.

(l) **Grade.** A subdivision of a type according to group and quality, and according to color when it is of sufficient importance to be treated as a separate factor.

(m) **Green.** Tobacco of which 20% or more of its leaf surface is predominantly green in color.

(n) **Greenish-tinge.** Tobacco of which 20% or more of its leaf surface has a decided greenish-cast or tobacco which is not 20% green but which has 20% of green and greenish-cast combined.

(o) **Group.** A division of a type covering several closely related grades based on the general quality of the tobacco, including body, the percentage of injury, and other characteristics.

(p) **Injury.** Hurt or impairment from any cause except damage. Injured tobacco shall include dead, burnt, hail-cut, or ragged tobacco; or tobacco that has been torn or broken, frozen or frosted, sunburned or scalded, scorched or fire-killed, bulk-burnt or steam-burnt, pole-burnt or house-burnt, bleached or bruised; or tobacco containing discolored or deformed leaves; or tobacco hurt by insects; or tobacco having an odor foreign to the type; or tobacco affected by wild-fire, rust, frog-eye, mosaic, frenching, sand-drown, or other similar diseases.

(q) **Leaf-scrap.** Unstemmed scrap, which is a byproduct from handling unstemmed tobacco consisting of loose and tangled whole or broken leaves.

(r) **Lot.** A pile, basket, bulk, package, or other definite unit.

(s) **Lugs.** Any lot of tobacco, except nondescript and scrap, composed chiefly of comparatively thin and lean leaves, and showing a material amount of injury of the kind characteristic of leaves grown near the ground; or any tobacco, except nondescript and scrap, injured or containing lug leaves, in excess of the tolerance allowed in the grades of the B- and C-groups.

(t) **Mixed.** A lot of tobacco which contains 30% or more leaves of distinctly different quality or color from the run of the lot, including variegated leaves unless such leaves are indicated by a special factor, and which contains less than 20% of green.

(u) **Nested.** Any lot of tobacco which has been so loaded, packed, or arranged as to conceal foreign matter or tobacco of inferior grade, quality, or condition, including lots of tobacco which contain damaged, injured, tangled, or other inferior tobacco which cannot be readily detected upon inspection on account of the way the lot was packed or arranged.

(v) **Nondescript.** Any nested tobacco; or muddy or extremely dirty tobacco; or tobacco containing an unusual amount of foreign matter; or tobacco containing over 40% of crude leaves; or tobacco damaged to the extent of 20% or more; or tobacco infested with live tobacco beetles or other injurious insects; or wet tobacco; or uncured tobacco including fat-stems and wet-butts; or very inferior lots of tobacco of a quality that is not ordinarily marketed; or tobacco having characteristics distinctly foreign to the type.

(w) **Quality.** A division of group, forming the second factor of a grade, based upon the relative degree of one or more of the elements of quality.

(x) **Resweated.** The condition of tobacco which has passed through a second fermentation under abnormally high temperatures, or refermented with a relatively high percentage of moisture, including tobacco which has been dipped or reconditioned after its first fermentation and put through a forced or artificial sweat.

(y) **Scrap.** A byproduct from handling tobacco in both the unstemmed and stemmed forms, consisting chiefly of portions of tobacco leaves, except stems, which accumulate in warehouses, packing and conditioning plants, and stemmeries.

(z) **Side.** Any distinct characteristic of tobacco; or a certain phase of quality, color, or length as compared with some other phase of quality, color, or length.

(aa) **Size.** The length of tobacco leaves.

(bb) **Sound.** Free of damage.

(cc) **Special factor.** Any side of a grade, or characteristic of importance, varying from or not covered by the specifications of the grade.

(dd) **Steamdried.** The condition of unfermented tobacco as customarily prepared for storage by means of a redrying machine or other steam-conditioning equipment.

(ee) **Stem.** The midrib of a tobacco leaf.

(ff) **Stemmed.** A form of tobacco from which the stems or midribs have been removed, including both strips and strip-scrap.

(gg) **Stems.** A tobacco byproduct composed of the midribs of tobacco leaves.

(hh) **Stouts.** A term used to designate tobacco of the heavy leaf or B-group.

(ii) **Strips.** The sides of tobacco leaves from which the stems have been removed.

(jj) **Strip-scrap.** Stemmed scrap or stemless scrap, which is a byproduct from stemming tobacco or handling strips consisting chiefly of portions of strips.

(kk) **Subgrade.** Any grade modified by a special factor symbol.

(ll) **Sweated.** The condition of tobacco which has passed through one or more fermentations natural to tobacco packed with a normal percentage of moisture.

(mm) **Sweating.** The condition of tobacco in the process of fermentation.

(nn) **Thins.** A term used to designate tobacco of the thin leaf or C-group.

(oo) **Tobacco.** Tobacco in its unmanufactured forms as it appears between the time it is cured and stripped from the stalk, or primed and cured and the time it enters a manufacturing process. Conditioning, sweating, and stemming are not regarded as manufacturing processes.

(pp) **Type.** A division of a class of tobacco having certain common characteristics and closely related grades. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths, shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco.

(qq) Type 21. That type of fire-cured tobacco known as Eastern Fire-cured, Virginia Fire-cured, or Virginia Smoked; produced principally in the Piedmont and mountain sections of Virginia. The terms “Dark” and “Dark-fired” are frequently used in referring to this and other types of fire-cured tobacco.

(rr) Type 22. That type of fire-cured tobacco known as Southern Fire-cured, Southern Smoked, or Kentucky Broadleaf, including fire-cured One-sucker of the Southern District; produced principally in a section east of the Tennessee River in southern Kentucky and northern Tennessee. The term “Eastern” is frequently used locally in referring to this type.

(ss) Type 23. That type of fire-cured tobacco known as Western Fire-cured, or Western Smoked, including the fire-cured One-sucker of the Western District; produced principally in a section west of the Tennessee River in Kentucky, and extending into Tennessee.

(tt) Type 24. That type of fire-cured tobacco known as Northern Fire-cured, Northern Smoked, or Stemming, including the fire-cured tobacco of the Green River District; produced principally in the Madisonville area of Kentucky.

(uu) Undried. The condition of unfermented tobacco which has not been airdried, or steamdried.

(vv) Uniformity. One of the elements of quality in tobacco having reference to the consistency of a lot with respect to other elements of quality or color. The following are the specifications for the several degrees of uniformity showing for each degree the percentage of a lot that may be of a distinctly different group, quality, or color from the run of the lot: (1) Uniform, less than 5 percent; (2) Harmonizing, less than 10 percent; (3) Unmingled, less than 20 percent; (4) Mingled or Unmixed, less than 30 percent; and (5) Mixed, over 30 percent.

(ww) Unstemmed. A form of tobacco from which the stems or mid-ribs have not been removed, including both whole-leaf and leaf-scrap.

(xx) Variegated. Having a diversity of contrasting colors or tints within a leaf; including leaves which are grey, mottled, bleached, or stained; or leaves which do not blend with the normal colors of the type.*† [pp. 4–8]

29.107 Rules. The application of these official standard grades shall be in accordance with the following rules:

Rule 1. Each grade shall be treated as a subdivision of a particular type and whenever a grade is stated in an inspection certificate, the type shall also be stated.

Rule 2. The determination of grade shall be based upon a thorough examination of a lot of tobacco or an official sample of the lot.

Rule 3. In determining the grade of a lot of tobacco, the lot as a whole shall be considered, and minor irregularities which do not affect over one per cent of the tobacco shall be overlooked.

Rule 4. Tobacco damaged under 20 percent shall be classed as unsound and treated as a subgrade by placing the special factor letter “U” after or above the grade mark. For example: if a lot of tobacco is under 20 percent damaged and otherwise meets the specifications of B4M, it shall be graded B4M-U.

Rule 5. When a lot of unmixed tobacco is on the marginal line between two colors so that there is a question as to which is the predominant color, it shall be placed in the color with which the tobacco best corresponds with respect to body and maturity.

Rule 6. Any lot of tobacco shall be regarded as meeting the specifications of a certain grade when the tobacco is not lower in any degree of quality than stated in the specifications of such grades. The degree of uniformity specified for a particular grade governs the percentage of a lot which must meet the specifications with respect to other degrees of quality.

Rule 7. Any lot of tobacco which clearly and fully meets the specifications of two or more grades shall be placed in the highest one of such grades; but any lot of tobacco which is on the marginal line between two or more grades so that the grade cannot be determined by applying other rules, shall be placed in the lowest grade in question.

Rule 8. The grade assigned to any lot of tobacco shall be a true representation of the tobacco at the time of inspection and certification thereof.

Rule 9. If, at any time, it is found that a lot of tobacco does not comply with the description and specifications of the grade previously assigned, it shall not thereafter be represented as being of such grade.

Rule 10. Any special factor symbol, approved for the purpose of the Bureau of Agricultural Economics, may be used after or above a grade mark to show a peculiar side or characteristic of the tobacco.

Rule 11. Length shall be stated in connection with each grade of the A-, B-, and C-groups, and may be stated in connection with the grades of the X-group. For this purpose, tobacco sizes as approved by the Bureau of Agricultural Economics shall be used.*† [pp. 9-10]

SUBPART—OFFICIAL STANDARD GRADES FOR FLUE-CURED TOBACCO

29.151 Wrapper grades (A-group). General specifications. All grades of the A-group must be clean, sound, ripe, firm, strong, and over 16" long, must have an open weave, light to true color shade, clear to bright finish, and small to medium size and blending fibers. General tolerance, 5 percent injury of a nature affecting wrapper yield.

U. S. Grade	GRADE DESCRIPTION, SPECIFICATIONS, AND TOLERANCE
A1L	Choice Quality Wrapper in Lemon Color. Very silky, very fine texture, very elastic, oily, thin to medium body, spready, uniform. Tolerance, 20% leaves of a quality not lower than B2 or C3.
A1F	Choice Quality Wrapper in Orange Color. Very oily, medium to fleshy body, otherwise same as A1L.
A1R	Choice Quality Wrapper in Red or Mahogany Color. Rich in oil, fleshy to heavy body, otherwise same as A1L.
A2L	Fine Quality Wrapper in Lemon Color. Silky, fine texture, Elastic, oily, thin to medium body, spready, uniform. Tolerance, 40% leaves of a quality not lower than B2 or C3.

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.101.

U. S.
Grade

A2F	Fine Quality Wrapper in Orange Color. Very oily, medium to fleshy body, otherwise same as A2L.
A2R	Fine Quality Wrapper in Red or Mahogany Color. Rich in oil, fleshy to heavy body, otherwise same as A2L.
A3L	Good Quality Wrapper Picker in Lemon Color. Fairly silky, good texture, fairly elastic, oily, thin to medium body, normal width, fairly uniform. Tolerance, 60% leaves of a quality not lower than B2 or C3.
A3F	Good Quality Wrapper Picker in Orange Color. Very oily, medium to fleshy body, otherwise same as A3L.
A3R	Good Quality Wrapper Picker in Red or Mahogany Color. Rich in oil, fleshy to heavy body, otherwise same as A3L.

*†

†The source of §§ 29.151 to 29.157, inclusive, is Official standard grades for Flue-cured tobacco, Department of Agriculture, Aug. 7, 1936, 1 F.R. 1045.

29.152 Leaf grades (B-group). General specifications. All grades of the B-group must be clean, sound, medium to heavy body, and must not exceed the tolerance specified with respect to injury and lugs.

U. S.
Grade

GRADE DESCRIPTION, SPECIFICATIONS, AND TOLERANCE

B1L	Choice Quality Leaf in Lemon Color. Very smooth, very good texture, stretchy, oily, ripe, firm, medium body, strong, normal width, open weave, light color shade, bright finish, medium size and blending fibers, uniform. Tolerance, 5% injury.
B1F	Choice Quality Leaf in Orange Color. Very oily, medium to fleshy body, otherwise same as B1L.
B1R	Choice Quality Leaf in Red or Mahogany Color. Rich in oil, fleshy body, otherwise same as B1L.
B2L	Fine Quality Leaf in Lemon Color. Smooth, good texture, stretchy, oily, ripe, firm, medium body, strong, normal width, open weave, fairly light color shade, bright finish, emerging fibers, fairly uniform. Tolerance 10% injury.
B2F	Fine Quality Leaf in Orange Color. Very oily, medium to fleshy body, otherwise same as B2L.
B2R	Fine Quality Leaf in Red or Mahogany Color. Rich in oil, fleshy body, otherwise same as B2L.
B3L	Good Quality Leaf in Lemon Color. Fairly smooth, fair texture, fairly oily, ripe, firm, medium body, fairly strong, normal width, true color shade, clear finish, harmonizing. Tolerance, 15% injury.
B3F	Good Quality Leaf in Orange Color. Oily, medium to fleshy body, otherwise same as B3L.
B3R	Good Quality Leaf in Red or Mahogany Color. Rich in oil, fleshy body, otherwise same as B3L.
B3D	Good Quality Leaf in Dark Red or Walnut Color. Rich in oil, heavy body, otherwise same as B3L.
B3G	Good Quality Leaf in Green Color. Quality of B3 or better, except maturity.
B4L	Fair Quality Leaf in Lemon Color. Unrough, fairly ripe, medium body, normal strength, not stringy, fairly true color shade, fairly clear finish, unmingled. Tolerance, 20% injury and 10% lugs of the quality of X3 or better.
B4F	Fair Quality Leaf in Orange Color. Medium to fleshy body, otherwise same as B4L.
B4R	Fair Quality Leaf in Red or Mahogany Color.

U. S.
Grade

	Fleshy body, otherwise same as B4L.
B4D	Fair Quality Leaf in Dark Red or Walnut Color.
	Heavy body, otherwise same as B4L.
B4G	Fair Quality Leaf in Green Color.
	Quality of B4, except maturity.
B5L	Low Quality Leaf in Lemon Color.
	Fairly ripe, medium body, dusky color shade, dull finish, unmixed.
	Tolerance, 30% injury and 20% lugs of the quality of X3 or better.
B5F	Low Quality Leaf in Orange Color.
	Medium to fleshy body, otherwise same as B5L.
B5R	Low Quality Leaf in Red or Mahogany Color.
	Fleshy body, otherwise same as B5L.
B5D	Low Quality Leaf in Dark Red or Walnut Color.
	Heavy body, otherwise same as B5L.
B5G	Low Quality Leaf in Green Color.
	Quality of B5, except maturity.
B6L	Common Quality Leaf in Lemon Color.
	Fairly ripe, medium body, dark color shade, dingy finish. Tolerance,
	40% injury and 30% lugs.
B6F	Common Quality Leaf in Orange Color.
	Medium to fleshy body, otherwise same as B6L.
B6R	Common Quality Leaf in Red or Mahogany Color.
	Fleshy body, otherwise same as B6L.
B6D	Common Quality Leaf in Dark Red or Walnut Color.
	Heavy body, otherwise same as B6L.
B6G	Common Quality Leaf in Green Color.
	Quality of B6, except maturity.

*†

29.153 Cutter grades (C-group). General specifications. All grades of the C-group must be clean, sound, thin to medium body, must have an open weave and small to medium size fibers, and must not exceed the tolerance specified with respect to injury and lugs.

U. S.
Grade

GRADE DESCRIPTION, SPECIFICATIONS, AND TOLERANCE

C1L	Choice Quality Cutters in Lemon Color.
	Very silky, fine texture, oily, thoroughly ripe, firm, thin body, fairly strong, spready, light color shade, bright finish, blending fibers, uniform. Tolerance, 5% injury.
C1F	Choice Quality Cutters in Orange Color.
	Fairly thin to medium body, otherwise same as C1L.
C2L	Fine Quality Cutters in Lemon Color.
	Silky, very good texture, oily, thoroughly ripe, firm, thin body, fairly strong, fairly spready, light color shade, very clear finish, blending fibers, fairly uniform. Tolerance, 10% injury.
C2F	Fine Quality Cutters in Orange Color.
	Fairly thin to medium body, otherwise same as C2L.
C3L	Good Quality Cutters in Lemon Color.
	Very smooth, good texture, fairly oily, ripe, fairly firm, thin body, normal strength, normal width, fairly light color shade, clear finish, emerging fibers, harmonizing. Tolerance, 15% injury and 10% lugs of the quality of X2 or better.
C3F	Good Quality Cutters in Orange Color.
	Fairly thin to medium body, otherwise same as C3L.
C4L	Fair Quality Cutters in Lemon Color.
	Smooth, fair texture, lean, ripe, thin body, normal strength, normal width, true color shade, normal finish, unmingled. Tolerance, 20% injury and 20% lugs of the quality of X2 or better.

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.151.

U. S.
Grade

C4F	Fair Quality Cutters in Orange Color. Fairly thin to medium body, otherwise same as C4L.
C5L	Low Quality Cutters in Lemon Color. Fairly smooth, lean, fairly ripe, thin body, not tender, normal width, fairly true color shade, normal to dull finish, unmixed. Tolerance, 20% injury and 30% lugs of quality of X3 or better.
C5F	Low Quality Cutters in Orange Color. Fairly thin to medium body, otherwise same as C5L.

*†

29.154 Lug grades (X-group). General specifications. All grades of the X-group must be clean, sound, and must not exceed the tolerance specified with respect to dead and trashy leaves.

U. S.
Grade

GRADE DESCRIPTION, SPECIFICATIONS, AND TOLERANCE

X1L	Choice Quality Cutting Lugs in Lemon Color. Smooth, fairly oily, thoroughly ripe, thin to medium body, grainy, very open weave, true color shade, fairly clear finish, fairly uni- form. Tolerance, 5% of dead and trashy leaves.
X1F	Choice Quality Cutting Lugs in Orange Color. Medium body, otherwise same as X1L.
X1R	Choice Quality Leafy Lugs in Red or Mahogany Color. Oily, medium to heavy body, otherwise same as X1L.
X2L	Fine Quality Cutting Lugs in Lemon Color. Fairly smooth, thoroughly ripe, thin to medium body, fairly grainy, open weave, fairly true color shade, normal finish, unmingled. Tolerance, 10% of dead and trashy leaves.
X2F	Fine Quality Cutting Lugs in Orange Color. Medium body, otherwise same as X2L.
X2R	Fine Quality Leafy Lugs in Red or Mahogany Color. Oily, medium to heavy body, otherwise same as X2L.
X3L	Good Quality Cutting or Granulating Lugs in Lemon Color. Unrough, ripe, thin to medium body, fairly grainy, fairly open weave, fairly dusky color shade, dull finish, unmixed. Tolerance, 20% of dead and trashy leaves.
X3F	Good Quality Cutting or Granulating Lugs in Orange Color. Medium body, otherwise same as X3L.
X3R	Good Quality Leafy Lugs in Red or Mahogany Color. Fairly oily, medium to heavy body, otherwise same as X3L.
X3G	Good Quality Lugs in Green Color. Quality of X3, except maturity.
X4L	Fair Quality Granulating Lugs in Lemon Color. Fairly ripe, thin to medium body, dusky color shade, cloudy finish. Tolerance, 40% dead and trashy leaves.
X4F	Fair Quality Granulating Lugs in Orange Color. Medium body, otherwise same as X4L.
X4R	Fair Quality Leafy Lugs in Red or Mahogany Color. Medium to heavy body, otherwise same as X4L.
X4G	Fair Quality Granulating Lugs in Green Color. Quality of X4, except maturity.
X5L	Common Quality Granulating Lugs in Lemon Color. Thin to medium body, dark color shade, dingy finish. Tolerance, 60% dead and trashy leaves.
X5F	Common Quality Granulating Lugs in Orange Color. Medium body, otherwise same as X5L.
X5R	Common Quality Leafy Lugs in Red or Mahogany Color. Medium to heavy body, otherwise same as X5L.
X5G	Common Quality Lugs in Green Color. Quality of X5, except maturity.

*†

29.155 Nondescript and scrap (N- & S-groups).

U. S. Grade	GRADE DESCRIPTION, SPECIFICATIONS, AND TOLERANCE
N	Nondescript, as defined.
S	Scrap, as defined.
*†	

29.156 Terms defined. For the purpose of these official standard grades, the following terms shall be construed, respectively, to mean:

(a) **Airdried.** The condition of the unfermented tobacco as customarily prepared for storage under natural atmospheric conditions.

(b) **Body.** The thickness of a leaf or weight per unit of surface.

(c) **Class.** A major division of tobacco based on characteristics caused by varieties, soils, or climatic conditions, and the methods of cultivation, harvesting, or curing.

(d) **Clean.** Normally free of dirt and other foreign matter.

(e) **Condition.** The state of tobacco in storage, or in relation to its preparation for storage, with reference to its manner of preparation or its degree of fermentation, such as Undried, Airdried, Steam-dried, Sweating, Sweated, and Resweated.

(f) **Crude.** Very immature or the lowest degree of maturity. Any tobacco of which 50% or more of its surface has a positive green color is crude.

(g) **Cured.** Tobacco dried of its sap by either natural or artificial processes.

(h) **Cutters.** Tobacco which is very thin to medium in body as compared with the average body of the type and which has the characteristics of lugs, except with respect to injury and finish.

(i) **Damage.** The effect of mold, must, rot, black-rot, or other fungous or bacterial diseases which attack tobacco in its cured state, including tobacco having the odor of mold, must, or rot.

(j) **Flue-cured.** Tobacco cured under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco.

(k) **Foreign matter.** Any substance or material extraneous to tobacco, including dirt, sand, stalks, suckers, straw, strings, et cetera.

(l) **Form.** The stage of preparation of tobacco, such as Unstemmed and Stemmed.

(m) **Grade.** A subdivision of a type according to group and quality, and according to color when it is of sufficient importance to be treated as a separate factor.

(n) **Green.** Tobacco of which 20% or more of its leaf surface is predominantly green in color.

(o) **Greenish-tinge.** Tobacco of which 20% or more of its leaf surface has a decided greenish-cast or tobacco which is not 20% green but which has 20% of green and greenish-cast combined.

(p) **Group.** A division of a type covering several closely related grades based on the general quality of the tobacco, including body, the percentage of injury, and other characteristics.

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.151.

(q) Injury. Hurt or impairment from any cause except damage. Injured tobacco shall include dead, burnt, hail-cut, or ragged tobacco; or tobacco that has been torn or broken, frozen or frosted, sunburned or scalded, scorched or fire-killed, bulk-burnt or steam-burnt, pole-burnt or house-burnt, bleached or bruised; or tobacco containing discolored or deformed leaves; or tobacco hurt by insects; or tobacco having an odor foreign to the type; or tobacco affected by wild-fire, rust, frog-eye, mosaic, frenching, sand-drown, or other similar diseases.

(r) Leaf. Tobacco which is medium to thick in body as compared with the average body of the type and which does not have the characteristics of lugs.

(s) Leaf-scrap. Unstemmed scrap, which is a byproduct from handling unstemmed tobacco consisting of loose and tangled whole or broken leaves.

(t) Lugs. Any lot of tobacco, except nondescript and scrap, composed chiefly of comparatively thin and lean leaves, and showing a material amount of injury of the kind characteristic of leaves grown near the ground; or any tobacco, except nondescript and scrap, injured or containing lug leaves, in excess of the tolerance allowed in the grades of the B- and C-groups.

(u) Mixed. A lot of tobacco which contains 30 percent or more leaves of distinctly different quality or color from the run of the lot, including variegated leaves unless such leaves are indicated by a special factor, and which contains less than 20 percent of green.

(v) Nested. Any lot of tobacco which has been so loaded, packed, or arranged as to conceal foreign matter or tobacco of inferior grade, quality, or condition, including lots of tobacco which contain damaged, injured, tangled, or other inferior tobacco which can not be readily detected upon inspection on account of the way the lot was packed or arranged.

(w) Nondescript. Any nested tobacco; or muddy or extremely dirty tobacco; or tobacco containing an unusual amount of foreign matter; or tobacco containing over 40 percent of crude leaves; or tobacco damaged to the extent of 20 percent or more; or tobacco infested with live tobacco beetles or other injurious insects; or wet tobacco; or uncured tobacco including fat-stems and wet-butts; or very inferior lots of tobacco of a quality that is not ordinarily marketed; or tobacco having characteristics distinctly foreign to the type.

(x) Premature. A low degree of maturity, but having the appearance of being ripe.

(y) Primings. Any lugs composed of very thin, pale, silky, and premature leaves, very low in oil and wax, and of a dull and dingy finish.

(z) Quality. A division of group, forming the second factor of a grade, based upon the relative degree of one or more of the elements of quality in tobacco.

(aa) Resweated. The condition of tobacco which has passed through a second fermentation under abnormally high temperatures, or refermented with a relatively high percentage of moisture, includ-

ing tobacco which has been dipped or reconditioned after its first fermentation and put through a forced or artificial sweat.

(bb) Scrap. A byproduct from handling tobacco in both the unstemmed and stemmed forms, consisting chiefly of portions of tobacco leaves, except stems, which accumulate in warehouses, packing and conditioning plants, and stemmeries.

(cc) Side. Any distinct characteristic of tobacco; or a certain phase of quality, color, or length as compared with some other phase of quality, color, or length.

(dd) Smoking-leaf. The thin side of leaf grades having prominent fibers (considering fiber size in relation to the thickness of the leaf), and characterized by being nonelastic, low in oil, mellow, very grainy, porous, and showing a considerable amount of injury of the kind normally found in very grainy or over-ripe tobacco.

(ee) Sound. Free of damage.

(ff) Special factor. Any side of a grade, or characteristic of importance, varying from or not covered by the specifications of the grade.

(gg) Steamdried. The condition of unfermented tobacco as customarily prepared for storage by means of redrying machine or other steam-conditioning equipment.

(hh) Stem. The midrib of a tobacco leaf.

(ii) Stemmed. A form of tobacco from which the stems or midribs have been removed, including both strips and strip-scrap.

(jj) Stems. A tobacco byproduct composed of the midribs of tobacco leaves.

(kk) Stouts. A term used to designate tobacco of the B-group.

(ll) Strips. The sides of tobacco leaves from which the stems have been removed.

(mm) Strip-scrap. Stemmed scrap or stemless scrap, which is a byproduct from stemming tobacco or handling strips consisting chiefly of portions of strips.

(nn) Subgrade. Any grade modified by a special factor symbol.

(oo) Sweated. The condition of tobacco which has passed through none or more fermentations natural to tobacco packed with a normal percentage of moisture.

(pp) Sweating. The condition of tobacco in the process of fermentation.

(qq) Thins. A term used to designate tobacco of the C-group.

(rr) Type. A division of a class of tobacco having certain common characteristics and closely related grades. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco.

(ss) Type 11. That type of flue-cured tobacco commonly known as Western Flue-cured or Old Belt and Middle Belt Flue-cured; and produced principally in the Piedmont sections of Virginia and North Carolina and the district extending eastward to the coastal plains region. That portion of this type known as Old Belt Flue-cured, normally characterized by a heavier body and darker color shade

and produced principally in the Piedmont sections of Virginia and North Carolina, may be classified as type 11a; and that portion of the type known as Middle Belt Flue-cured, normally characterized by a thinner body and lighter color shade and produced principally in a section lying between the Piedmont and coastal plains regions of Virginia and North Carolina, may be classified as type 11b.

(tt) **Type 12.** That type of flue-cured tobacco commonly known as Eastern Flue-cured, New Belt of North Carolina Flue-cured, or Eastern Carolina Flue-cured; and produced principally in the coastal plains section of North Carolina, north of the South River.

(uu) **Type 13.** That type of flue-cured tobacco commonly known as Southeastern Flue-cured, South Carolina Flue-cured, or New Belt of South Carolina; and produced principally in the coastal plains section of South Carolina, and the southeastern counties of North Carolina, south of the South River.

(vv) **Type 14.** That type of flue-cured tobacco commonly known as Southern Flue-cured or New Belt of Georgia, Florida, and Alabama; and produced principally in the southern section of Georgia and to some extent in Florida and Alabama.

(ww) **Undried.** The condition of unfermented tobacco which has not been airdried or steamdried.

(xx) **Uniformity.** One of the elements of quality in tobacco having reference to the consistency of a lot with respect to other elements of quality or color. The following are the specifications for the several degrees of uniformity showing for each degree the percentage of a lot that may be of a distinctly different group, quality, or color from the run of the lot: (1) Uniform, less than 5 percent; (2) Harmonizing, less than 10 percent; (3) Unmingled, less than 20 percent; (4) Mingled or Unmixed, less than 30 percent; and (5) Mixed, over 30 percent.

(yy) **Unstemmed.** A form of tobacco from which the stems or mid-ribs have not been removed, including both whole-leaf and leaf-scrap.

(zz) **Variegated.** Having a diversity of contrasting colors or tints within a leaf; including leaves which are grey, mottled, bleached, or stained; or leaves which do not blend with the normal colors of the type.*†

29.157 Rules. The application of these official standard grades shall be in accordance with the following rules:

Rule 1. Each grade shall be treated as a subdivision of a particular type and whenever a grade is stated in an inspection certificate, the type shall also be stated.

Rule 2. The determination of grade shall be based upon a thorough examination of a lot of tobacco or an official sample of the lot.

Rule 3. In determining the grade of a lot of tobacco, the lot as a whole shall be considered, and minor irregularities which do not affect over one percent of the tobacco shall be overlooked.

Rule 4. Tobacco damaged under 20% shall be classed as unsound and treated as a subgrade by placing the special factor letter "U" after or above the grade mark. For example: if a lot of tobacco is under 20% damaged and otherwise meets the specifications of B4M, it shall be graded B4M-U.

Rule 5. When a lot of unmixed tobacco is on the marginal line between two colors so that there is a question as to which is the predominant color, it shall be placed in the color with which the tobacco best corresponds with respect to body and maturity.

Rule 6. Any lot of tobacco shall be regarded as meeting the specifications of a certain grade when the tobacco is not lower in any degree of quality than stated in the specifications of such grades. The degree of uniformity specified for a particular grade governs the percentage of a lot which must meet the specifications with respect to other degrees of quality.

Rule 7. Any lot of tobacco which clearly and fully meets the specifications of two or more grades shall be placed in the highest one of such grades; but any lot of tobacco which is on the marginal line between two or more grades so that the grade cannot be determined by applying other rules, shall be placed in the lowest grade in question.

Rule 8. The grade assigned to any lot of tobacco shall be a true representation of the tobacco at the time of inspection and certification thereof.

Rule 9. If, at any time, it is found that a lot of tobacco does not comply with the description and specifications of the grade previously assigned, it shall not thereafter be represented as being of such grade.

Rule 10. Any special factor symbol, approved for the purpose by the Bureau of Agricultural Economics, may be used after or above a grade mark to show a peculiar side or characteristic of the tobacco.

Rule 11. When a lot contains tobacco of two or more colors, it shall be graded in the predominant color, and, if the lot is mixed, the special factor letter "M" shall be used after or above the grade mark.

Rule 12. Smoking-leaf grades in F and R colors shall be made a subgroup of leaf by substituting the letter "H" for the group letter "B" in the grade symbols.

Rule 13. Priming grades in L, F, and G colors shall be made a subgroup of lugs by substituting the letter "P" for the group letter "X" in the grade symbols.*†

SUBPART—OFFICIAL STANDARD GRADES FOR BURLEY TOBACCO

29.201 Wrappers or fancy cutters and leaf grades (A-group).
General specifications. All grades of the A-group must be clean, sound, ripe, firm, strong, normal width, and over 20" long, must have an open weave, a light color shade, small and blending fibers. General tolerance, 5 percent injury of a nature affecting wrapper yield.

U.S. Grade	GRADE DESCRIPTION AND SPECIFICATIONS
A1L	Choice Quality Wrappers or Very Fancy Cutters in Buff Color. Very silky, very fine texture, fairly elastic, fairly oily, very thin body, very bright finish, uniform. Tolerance, 20% leaves of a quality not lower than B2 or C3.
A1F	Choice Quality Wrappers or Very Fancy Leaf in Tan Color. Oily and fairly thin to medium body, otherwise same as A1L.
A1R	Choice Quality Wrappers or Very Fancy Leaf in Red Color. Very oily and medium to fleshy body, otherwise same as A1L.

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.151.

U. S.
Grade

- A2L Fine Quality Wrappers or Fancy Cutters in Buff Color.
Silky, fine texture, semi-elastic, fairly oily, thin body, bright finish,
uniform. Tolerance, 40% leaves of a quality not lower than B2 or
C3.
- A2F Fine Quality Wrappers or Fancy Leaf in Tan Color.
Oily and fairly thin to medium body, otherwise same as A2L.
- A2R Fine Quality Wrappers or Fancy Leaf in Red Color.
Very oily and medium to fleshy body, otherwise same as A2L.

*†

†The source of §§ 29.201 to 29.207, inclusive, (except for the amendments noted in the text,) is Official standard grades for Burley tobacco, Department of Agriculture, Nov. 25, 1936, 1 F.R. 2040.

29.202 Leaf and filler grades (B-group). General specifications. All grades of the B-group must be clean, sound, and medium to heavy in body, and must not exceed the tolerance specified.

U. S.
Grade

GRADE DESCRIPTION AND SPECIFICATIONS

- B1F Choice Quality Leaf in Tan Color.
Very smooth, very good texture, oily, ripe, firm, medium body, strong,
normal width, open weave, light color shade, very clear finish,
fairly small and blending fibers, uniform, over 20'' long. Toler-
ance, 5% injury.
- B1R Choice Quality Leaf in Red Color.
Very oily and medium to fleshy body, otherwise same as B1F.
- B2F Fine Quality Leaf in Tan Color.
Smooth, good texture, oily, ripe, firm, medium body, strong, normal
width, open weave, true color shade, clear finish, small to medium
size and blending fibers, harmonizing, over 20'' long. Tolerance,
10% injury.
- B2R Fine Quality Leaf in Red Color.
Very oily and medium to fleshy body, otherwise same as B2F.
- B3F Good Quality Leaf in Tan Color.
Fairly smooth, fair texture, fairly oily, ripe, firm, medium to fleshy
body, fairly strong, normal width, fairly open weave, fairly true
color shade, fairly clear finish, emerging fibers, unmingled, over
18'' long. Tolerance, 15% injury.
- B3R Good Quality Leaf in Red Color.
Oily and fleshy body, otherwise same as B3F.
- B3D Good Quality Leaf in Dark Red Color.
Very oily and very fleshy body, otherwise same as B3F.
- B3G Good Quality Leaf in Green Color.
Quality of B3 or better, except maturity.
- B4F Fair Quality Leaf in Tan Color.
Unrough, fairly ripe, fairly fleshy body, normal strength, not stringy,
dusky color shade, dull finish, unmixed, over 16'' long. Tolerance,
20% injury.
- B4R Fair Quality Leaf in Red Color.
Fleshy body, otherwise same as B4F.
- B4D Fair Quality Leaf in Dark Red Color.
Heavy body, otherwise same as B4F.
- B4G Fair Quality Leaf in Green Color.
Quality of B4, except maturity.
- B5F Low Quality Leaf in Tan Color.
Very fleshy body, dark color shade, cloudy to dingy finish, over 16''
long. Tolerance, 40% injury.
- B5R Low Quality Leaf in Red Color.
Fairly heavy body, otherwise same as B5F.

U. S.
Grade

B5D Low Quality Leaf in Dark Red Color.
Heavy body, otherwise same as B5F.
B5G Low Quality Leaf in Green Color.
Quality of B5, except maturity.

*†

29.203 Lugs or cutters (C-group). General specifications. All grades of the C-group must be clean, sound, and thin to medium in body, and must not exceed the tolerance specified.

U. S.
Grade

GRADE DESCRIPTION AND SPECIFICATIONS

C1L Choice Quality Lugs or Cutters in Straw Color.
Silky, fine texture, lean, mellow, firm, tissuey body, normal strength, normal width, very open weave, very light color shade, very bright finish, small and blending fibers, uniform, over 20'' long. Tolerance, 5% injury.

C1F Choice Quality Lugs or Cutters in Tan Color.
Very thin body, otherwise same as C1L.

C2L Fine Quality Lugs or Cutters in Straw Color.
Very smooth, very good texture, lean, mellow, firm, fairly tissuey body, normal strength, normal width, open weave, light color shade, bright finish, small and blending fibers, harmonizing, over 20'' long. Tolerance, 10% injury.

C2F Fine Quality Lugs or Cutters in Tan Color.
Very thin body, otherwise same as C2L.

C3L Good Quality Lugs or Cutters in Straw Color.
Smooth, good texture, fairly lean, ripe, firm, very thin body, normal strength, normal width, open weave, true color shade, clear finish, small to medium size and emerging fibers, unmingled, over 18'' long. Tolerance, 15% injury.

C3F Good Quality Lugs or Cutters in Tan Color.
Thin body, otherwise same as C3L.

C3G Good Quality Lugs or Cutters in Green Color.
Quality of C3 or better, except maturity.

C4L Fair Quality Cutters in Straw Color.
Fairly smooth, fair texture, fairly ripe, fairly firm, thin body, normal strength, not stringy, fairly open weave, fairly true color shade, fairly clear finish, unmixed, over 16'' long. Tolerance, 20% injury.

C4F Fair Quality Cutters in Tan Color.
Fairly thin body, otherwise same as C4L.

C4G Fair Quality Cutters in Green Color.
Quality of C4 except maturity.

C5L Low Quality Cutters in Straw Color.
Unrough, thin body, not tender or stringy, fairly open weave, dusky color shade, dull to cloudy finish, over 16'' long. Tolerance, 40% injury.

C5F Low Quality Cutters in Tan Color.
Fairly thin to medium body, otherwise same as C5L.

C5G Low Quality Cutters in Green Color.
Quality of C5, except maturity.

C3R Good Quality Cutters in Red Color.
Fairly thin body, otherwise same as C3L.

C4R Fair Quality Cutters in Red Color.
Fairly thin to medium body, otherwise same as C4L.

C5R Low Quality Cutters in Red Color.
Fairly thin to medium body, otherwise same as C5L.

*[Official standard grades for Burley tobacco, Nov. 25, 1936, 1 F.R. 2040, as amended Jan. 18, 1938, 3 F.R. 189]

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.201.

29.204 Granulators or flyings (X-group). General specifications. All grades of the X group must be clean and sound, and must not exceed the tolerance specified.

U. S. Grade	GRADE DESCRIPTION AND SPECIFICATIONS
X1L	Choice Quality Flyings in Straw Color. Smooth, lean, mellow, flimsy, very tissuey body, open weave, pale color shade, very clear finish, uniform.
X1F	Choice Quality Flyings in Tan Color. Tissuey body, otherwise same as X1L.
X2L	Fine Quality Flyings in Straw Color. Smooth, lean, mellow, flimsy, tissuey body, fairly open weave, light color shade, clear finish, harmonizing.
X2F	Fine Quality Flyings in Tan Color. Fairly tissuey body, otherwise same as X2L.
X3L	Good Quality Flyings in Straw Color. Fairly smooth, fairly lean, ripe, fairly flimsy, fairly tissuey body, porous weave, true color shade, dull finish, unmingled. Tolerance, 10% dead and inferior leaves.
X3F	Good Quality Flyings in Tan Color. Very thin body, otherwise same as X3L.
X3R	Good Quality Flyings in Red Color. Fairly thin body, otherwise same as X3L.
X3G	Good Quality Flyings in Green Color. Quality of X3 or better, except maturity.
X4L	Fair Quality Flyings in Straw Color. Fairly smooth, fairly ripe, very thin body, very porous weave, dusky color shade, cloudy finish, unmixed. Tolerance, 20% dead and inferior leaves.
X4F	Fair Quality Flyings in Tan Color. Thin body, otherwise same as X4L.
X4R	Fair Quality Flyings in Red Color. Thin to medium body, otherwise same as X4L.
X4G	Fair Quality Flyings in Green Color. Quality of X4, except maturity.
X5L	Low Quality Flyings in Straw Color. Thin body, very porous weave, dark color shade, dingy finish. Tolerance, 40% dead and inferior leaves.
X5F	Low Quality Flyings in Tan Color. Fairly thin body, otherwise same as X5L.
X5R	Low Quality Flyings in Red Color. Medium body, otherwise same as X5L.
X5G	Low Quality Flyings in Green Color. Quality of X5, except maturity.

*†

29.205 Nondescript and scrap (N- & S-groups).

U. S. Grade	GRADE DESCRIPTION AND SPECIFICATIONS
N	Nondescript, as defined.
S	Scrap, as defined.

*†

29.206 Terms defined. For the purposes of these official standard grades, the following terms shall be construed, respectively, to mean:

(a) **Aircured.** Tobacco cured under natural atmospheric conditions without the use of fire, except for the purpose of preventing pole-burn in damp weather.

(b) **Airdried.** The condition of unfermented tobacco as customarily prepared for storage under natural atmospheric conditions.

(c) **Body.** The thickness of leaf or weight per unit of surface.

(d) **Class.** A major division of tobacco based on characteristics caused by varieties, soils, or climatic conditions, and the methods of cultivation, harvesting, or curing.

(e) **Clean.** Normally free of dirt and other foreign matter.

(f) **Condition.** The state of tobacco in storage, or in relation to its preparation for storage, with reference to its manner of preparation or its degree of fermentation, such as Undried, Airdried, Steam-dried, Sweating, Sweated, and Resweated.

(g) **Crude.** Very immature or the lowest degree of maturity. Any tobacco of which 50% or more of its surface has a positive green color is crude.

(h) **Cured.** Tobacco dried of its sap by either natural or artificial processes.

(i) **Damage.** The effect of mold, must, rot, black-rot, or other fungous or bacterial diseases which attack tobacco in its cured state, including tobacco having the odor of mold, must, or rot.

(j) **Foreign matter.** Any substance or material extraneous to tobacco, including dirt, sand, stalks, suckers, straw, strings, et cetera.

(k) **Form.** The stage of preparation of tobacco, such as Unstemmed, and Stemmed.

(l) **Grade.** A subdivision of a type according to group and quality, and according to color when it is of sufficient importance to be treated as a separate factor.

(m) **Green.** Tobacco of which 20 percent or more of its leaf surface is predominantly green in color.

(n) **Greenish-tinge.** Tobacco of which 20 percent or more of its leaf surface has a decided greenish-cast or tobacco which is not 20 percent green but which has 20 percent of green and greenish-cast combined.

(o) **Group.** A division of a type covering several closely related grades based on the general quality of the tobacco, including body, the percentage of injury, and other characteristics.

(p) **Injury.** Hurt or impairment from any cause except damage. Injured tobacco shall include dead, burnt, hail-cut, or ragged tobacco; or tobacco that has been torn or broken, frozen or frosted, sunburned or scalded, scorched or fire-killed, bulk-burnt or steam-burnt, pole-burnt or house-burnt, bleached or bruised; or tobacco containing discolored or deformed leaves; or tobacco hurt by insects; or tobacco having an odor foreign to the type; or tobacco affected by wild-fire, rust, frog-eye, mosaic, frenching, sand-drown, or other similar diseases.

(q) **Leaf-scrap.** Unstemmed scrap, which is a byproduct from handling unstemmed tobacco consisting of loose and tangled whole or broken leaves.

(r) **Mixed.** A lot of tobacco which contains 30 percent or more leaves of distinctly different quality or color from the run of the lot, including variegated leaves unless such leaves are indicated by a special factor, and which contains less than 20 percent green.

(s) **Nested.** Any lot of tobacco which has been so loaded, packed, or arranged as to conceal foreign matter or tobacco of inferior grade, quality, or condition, including lots of tobacco which contain damaged, injured, tangled, or other inferior tobacco which cannot be readily detected upon inspection on account of the way the lot was packed or arranged.

(t) **Nondescript.** Any nested tobacco; or muddy or extremely dirty tobacco; or tobacco containing an unusual amount of foreign matter; or tobacco containing over 40% of crude leaves; or tobacco damaged to the extent of 20% or more; or tobacco infested with live tobacco beetles or other injurious insects; or wet tobacco; or uncured tobacco including fat-stems and wet-butts; or very inferior lots of tobacco of a quality that is not ordinarily marketed; or tobacco having characteristics distinctly foreign to the type.

(u) **Quality.** A division of group, forming the second factor of a grade, based upon the relative degree of one or more of the elements of quality in tobacco.

(v) **Resweated.** The condition of tobacco which has passed through a second fermentation under abnormally high temperatures, or re fermented with a relatively high percentage of moisture, including tobacco which has been dipped or reconditioned after its first fermentation and put through a forced or artificial sweat.

(w) **Scrap.** A byproduct from handling tobacco in both the unstemmed and stemmed forms, consisting chiefly of portions of tobacco leaves, except stems, which accumulate in warehouses, packing and conditioning plants, and stemmeries.

(x) **Side.** Any distinct characteristic of tobacco; or a certain phase of quality, color, or length as compared with some other phase of quality, color, or length.

(y) **Sound.** Free of damage.

(z) **Special factor.** Any side of a grade, or characteristic of importance, varying from or not covered by the specifications of the grade.

(aa) **Steamdried.** The condition of unfermented tobacco as customarily prepared for storage by means of a redrying machine or other steam-conditioning equipment.

(bb) **Stem.** The midrib of a tobacco leaf.

(cc) **Stemmed.** A form of tobacco from which the stem or midribs have been removed, including both strips and strip-scrap.

(dd) **Stems.** A tobacco byproduct composed of the midribs of tobacco leaves.

(ee) **Strips.** The sides of tobacco leaves from which the stems have been removed.

(ff) **Strip-scrap.** Stemmed scrap or stemless scrap, which is a byproduct from stemming tobacco or handling strips consisting chiefly of portions of strips.

(gg) **Subgrade.** Any grade modified by a special factor symbol.

(hh) **Subgroup.** A group formed by the substitution of a different group symbol to denote a modification in the specifications or to indicate a certain side or characteristic of the tobacco.

(ii) **Sweated.** The condition of tobacco which has passed through one or more fermentations natural to tobacco packed with a normal percentage of moisture.

(jj) **Sweating.** The condition of tobacco in the process of fermentation.

(kk) **Type.** A division of a class of tobacco having certain common characteristics and closely related grades. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths, shall be treated as one type regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco.

(ll) **Type 31.** That type of aircured tobacco commonly known as Burley, Burley Aircured, Red Burley, White Burley, or Light Aircured of Kentucky, and produced principally in central and northeastern Kentucky, southern Ohio and Indiana, western West Virginia, central and eastern Tennessee, and sections of Virginia, North Carolina, Missouri, and Arkansas.

(mm) **Undried.** The condition of unfermented tobacco which has not been airdried or steamdried.

(nn) **Uniformity.** One of the elements of quality in tobacco having reference to the consistency of a lot with respect to other elements of quality or color. The following are the specifications for the several degrees of uniformity showing for each degree the percentage of a lot that may be of a distinctly different group, quality, or color from the run of the lot: (1) Uniform, less than 5%; (2) Harmonizing, less than 10%; (3) Unmingled, less than 20%; (4) Unmixed or Mingled, less than 30%; and (5) Mixed, over 30%.

(oo) **Unstemmed.** A form of tobacco from which the stems or midribs have not been removed, including both whole-leaf and leaf-scrap.

(pp) **Variegated.** Having a diversity of contrasting colors or tints within a leaf; including leaves which are grey, mottled, bleached, or stained; or leaves which do not blend with the normal colors of the type.*†

29.207 Rules. The application of these official standard grades shall be in accordance with the following rules:

Rule 1. Each grade shall be treated as a subdivision of a particular type and when the grade is stated in an inspection certificate, the type shall also be stated.

Rule 2. The determination of grade shall be based upon a thorough examination of a lot of tobacco or an official sample of the lot.

Rule 3. In determining the grade of a lot of tobacco, the lot as a whole shall be considered, and minor irregularities which do not affect over one per cent of the tobacco shall be overlooked.

Rule 4. Tobacco damaged under 20 percent shall be classed as unsound and treated as a subgrade by placing the special factor letter "U" after or above the grade mark. For example: if a lot of tobacco is under 20 percent damaged and otherwise meets the specifications of B4F, it shall be graded B4F-U.

Rule 5. When a lot of unmixed tobacco is on the marginal line between two colors so that there is a question as to which is the

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.201.

predominant color, it shall be placed in the color with which the tobacco best corresponds with respect to body and maturity.

Rule 6. Any lot of tobacco shall be regarded as meeting the specifications of a certain grade when the tobacco is not lower in any degree of quality than stated in the specifications of such grade. The degree of uniformity specified for a particular grade governs the percentage of a lot which must meet the specifications with respect to other degrees of quality.

Rule 7. Any lot of tobacco which clearly and fully meets the specification of two or more grades shall be placed in the highest one of such grades, but any lot of tobacco which is on the marginal line between two or more grades so that the grade cannot be determined by applying other rules, shall be placed in the lowest grade in question.

Rule 8. The grade assigned to any lot of tobacco shall be a true representation of the tobacco at the time of inspection and certification thereof.

Rule 9. If, at any time, it is found that a lot of tobacco does not comply with the description and specifications of the grade previously assigned, it shall not thereafter be represented as being of such grade.

Rule 10. Any special factor symbol, approved for the purpose by the Bureau of Agricultural Economics, may be used after or above a grade mark to show a peculiar side or characteristic of the tobacco.

Rule 11. A lot of mixed tobacco shall be graded in the color which predominates, and, if the lot is mixed or contains variegated leaves in excess of the specifications with respect to uniformity, the special factor letter "M" shall be used to designate mixed or the special factor letter "K" shall be used to designate variegated, as the case may be.

Rule 12. Tips, including leaf and fillers under 16 inches long but otherwise of the qualities of B3, B4, and B5, shall be made a subgroup by substituting the letter "T" for the group letter "B" in the grade symbols.*†

SUBPART—OFFICIAL STANDARD GRADES FOR GREEN RIVER TOBACCO

29.251 Heavy leaf grades (B-group). General specifications. All grades of the B-group must be clean, sound, and medium to heavy body. B1 and B2 qualities must be smooth and must have good texture, an open weave, medium size and blending fibers.

U. S. Grade	GRADE DESCRIPTION AND SPECIFICATIONS
B1F	Choice Quality Stouts in Brown Color. Fairly elastic, oily, ripe, firm, medium to fleshy body, tough, broad, very clear, over 20" long, uniform. Tolerance, 5% injury and 10% leaves the quality of B3, C3, or better.
B1R	Choice Quality Stouts in Red Color. Very oily, fleshy body, otherwise same as B1F.

U. S.
Grade

B2F	Fine Quality Stouts in Brown Color. Stretchy, oily, ripe, firm, medium to fleshy body, fairly tough, spready, clear, over 18'' long, harmonizing. Tolerance, 10% injury and 20% leaves the quality of B3 or C3.
B2R	Fine Quality Stouts in Red Color. Very oily, fleshy body, otherwise same as B2F.
B3F	Good Quality Stouts in Brown Color. Fairly smooth, fair texture, stretchy, oily, ripe, firm, strong, normal width, fairly open weave, normal finish, over 16'' long, unmingled. Tolerance, 15% injury and 5% Lugs the quality of X2 or better.
B3R	Good Quality Stouts in Red Color. Very oily, fleshy body, otherwise same as B3F.
B3D	Good Quality Stouts in Dark Color. Very oily, heavy body, otherwise same as B3F.
	Good Quality Stouts Mixed in Color or Quality. Mixed tobacco of an average quality of B3 or better.
B3G	Good Quality Stouts in Green Color. Quality of B3 or better, except maturity.
B4F	Fair Quality Stouts in Brown Color. Not rough, fairly oily, fairly ripe, fairly firm, medium to fleshy body, fairly strong, not stringy, over 16'' long, unmixed. Tolerance, 20% injury and 10% Lugs the quality of X3 or better.
B4R	Fair Quality Stouts in Red Color. Fleshy body, otherwise same as B4F.
B4D	Fair Quality Stouts in Dark Color. Heavy body, otherwise same as B4F.
B4M	Fair Quality Stouts Mixed in Color or Quality. Mixed tobacco of an average quality of B4.
B4G	Fair Quality Stouts in Green Color. Quality of B4, except maturity.
B5F	Low Quality Stouts in Brown Color. Medium to fleshy body, normal strength, not stringy, over 16'' long. Tolerance, 40% injury and 25% Lugs the quality of X3 or better.
B5R	Low Quality Stouts in Red Color. Fleshy body, otherwise same as B5F.
B5D	Low Quality Stouts in Dark Color. Fairly heavy body, otherwise same as B5F.
B5G	Low Quality Stouts in Green Color. Quality B5, except maturity.

*†

†The source of §§ 29.251 to 29.256, inclusive, is Official standard grades for Green River tobacco, Department of Agriculture, Jan. 13, 1937, 2 F.R. 66.

29.252 Thin leaf grades (C-group). General specifications. All grades of the C-group must be clean, sound, and thin to medium body. C1 and C2 qualities must be very smooth, must have good texture, open weave, small to medium size and blending fibers.

U. S.
Grade

GRADE DESCRIPTION AND SPECIFICATIONS

C1L	Choice Quality Thins in Light Color. Fairly elastic, oily, ripe, firm, thin body, strong, broad, very clear, over 20'' long, uniform. Tolerance, 5% injury and 10% leaves the quality of C3, B3, or better.
C1F	Choice Quality Thins in Brown Color. Fairly thin body, otherwise same as C1L.
C1R	Choice Quality Thins in Red Color. Fairly thin to medium body, otherwise same as C1L.
C2L	Fine Quality Thins in Light Color. Fairly stretchy, oily, ripe, firm, thin body, fairly strong, spready, clear, over 18'' long, harmonizing. Tolerance, 10% injury and 20% leaves the quality of C3 or B3.
C2F	Fine Quality Thins in Brown Color. Fairly thin body, otherwise same as C2L.

U. S.
Grade

C2R	Fine Quality Thins in Red Color. Fairly thin to medium body, otherwise same as C2L.
C3L	Good Quality Thins in Light Color. Smooth, fair texture, fairly oily, fairly ripe, firm, thin body, normal strength and width, fairly open weave, normal finish, over 16'' long, unmingled. Tolerance, 15% injury and 5% Lugs the quality of X2 or better.
C3F	Good Quality Thins in Brown Color. Fairly thin body, otherwise same as C3L.
C3R	Good Quality Thins in Red Color. Fairly thin to medium body, otherwise same as C3L.
C3M	Good Quality Thins Mixed in Color or Quality. Mixed tobacco of an average quality of C3 or better.
C4L	Fair Quality Thins in Light Color. Not coarse, lean, fairly ripe, fairly firm, thin body, not weak or stringy, over 16'' long, unmixed. Tolerance, 20% injury and 10% Lugs the quality of X3 or better.
C4F	Fair Quality Thins in Brown Color. Fairly thin body, otherwise same as C4L.
C4R	Fair Quality Thins in Red Color. Fairly thin to medium body, otherwise same as C4L.
C4M	Fair Quality Thins Mixed in Color or Quality. Mixed Tobacco of an average quality of C4.
C4G	Fair Quality Thins in Pale Green Color. Quality of C4 or better, except maturity.
C5L	Low Quality Thins in Light Color. Thin body, not tender or stringy, over 16'' long. Tolerance, 40% injury and 25% Lugs the quality of X3 or better.
C5F	Low Quality Thins in Brown Color. Fairly thin body, otherwise same as C5L.
C5R	Low Quality Thins in Red Color. Fairly thin to medium body, otherwise same as C5L.
C5G	Low Quality Thins in Pale Green Color. Quality of C5, except maturity.

*†

29.253 Lug grades (X-group). General specifications. All grades of the X-group must be sound and normally free of dirt and other foreign matter.

U. S.
Grade

GRADE DESCRIPTION AND SPECIFICATIONS

X1L	Choice Quality Lugs in Light Color. Fairly smooth, fairly oily, very ripe, fairly firm, thin body, strong, harmonizing.
X1F	Choice Quality Lugs in Brown Color. Medium body, otherwise same as X1L.
X1R	Choice Quality Lugs in Red Color. Flethy to heavy body, otherwise same as X1L.
X2L	Fine Quality Lugs in Light Color. Not coarse, fairly oily, ripe, fairly firm, thin body, fairly strong, unmingled.
X2F	Fine Quality Lugs in Brown Color. Medium body, otherwise same as X2L.
X2R	Fine Quality Lugs in Red Color. Flethy to heavy body, otherwise same as X2L.
X3L	Good Quality Lugs in Light Color. Not rough, fairly ripe, fairly firm, thin body, normal strength, unmixed. Tolerance, 10% dead and trashy leaves.
X3F	Good quality Lugs in Brown Color. Medium body, otherwise same as X3L.
X3R	Good Quality Lugs in Red Color. Flethy body, otherwise same as X3L.
X3M	Good Quality Mixed Lugs. Flethy mixed Lugs of an average quality of X3 or better.

U. S.
Grade

X3G	Good Quality Lugs in Dark Green Color. Fleshy Lugs the quality of X3 or better, except maturity.
X4L	Fair Quality Lugs in Light Color. Not flabby, thin body, not weak, unmixed. Tolerance, 20% dead and trashy leaves.
X4F	Fair Quality Lugs in Brown Color. Fairly thin body, otherwise same as X4L.
X4D	Fair Quality Lugs in Dark Color. Fairly fleshy body, otherwise same as X4L.
X4M	Fair Quality Mixed Lugs. Fairly fleshy mixed Lugs of an average quality of X4.
X4G	Fair Quality Green Lugs. Fairly fleshy Lugs the quality of X4, except maturity.
X5L	Low Quality Lugs in Light Color. Not flabby, thin body, not tender. Tolerance 40% dead and trashy leaves.
X5F	Low Quality Lugs in Brown Color. Fairly thin body, otherwise same as X5L.
X5D	Low Quality Lugs in Dark Color. Medium body, otherwise same as X5L.
X5G	Low Quality Green Lugs. Quality of X5, except maturity.

*†

29.254 Nondescript and scrap (N- & S-groups).

U. S.
Grade

GRADE DESCRIPTION AND SPECIFICATIONS

N	Nondescript, as defined.
S	Scrap, as defined.*†

29.255 Terms defined. For the purpose of these official standard grades the following terms shall be construed, respectively, to mean:

(a) **Aircured.** Tobacco cured under natural atmospheric conditions without the use of fire, except for the purpose of preventing pole-burn in damp weather.

(b) **Airdried.** The condition of unfermented tobacco as customarily prepared for storage under natural atmospheric conditions.

(c) **Body.** The thickness of leaf or weight per unit of surface.

(d) **Class.** A major division of tobacco based on characteristics caused by varieties, soils, or climatic conditions, and the method of cultivation, harvesting, or curing.

(e) **Clean.** Normally free of dirt and other foreign matter.

(f) **Condition.** The state of tobacco in storage, or in relation to its preparation for storage, with reference to its manner of preparation or its degree of fermentation, such as Undried, Airdried, Steam-dried, Sweating, Sweated, and Resweated.

(g) **Crude.** Very immature or the lowest degree of maturity. Any tobacco of which 50 percent or more of its surface has a positive green color is crude.

(h) **Cured.** Tobacco dried of its sap by either natural or artificial processes.

(i) **Damaged.** Effected by mold, must, rot, black-rot, or other fungous or bacterial disease which attack tobacco in its cured state, including the odor of mold, must, or rot.

(j) **Decayed.** Damaged to the extent of 20 percent or more.

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.251.

(k) **Foreign matter.** Any substance or material extraneous to tobacco, including dirt, sand, stalks, suckers, straw, strings, et cetera.

(l) **Form.** The stage of preparation of tobacco, such as Unstemmed and Stemmed.

(m) **Grade.** A subdivision of a type according to group and quality, and according to color when it is of sufficient importance to be treated as a separate factor.

(n) **Green.** Tobacco of which 20 percent or more of its leaf surface is predominantly green in color.

(o) **Greenish-tinge.** Tobacco of which 20 percent or more of its leaf surface has a decided greenish-cast or tobacco which is not 20 percent green but which has 20 percent of green and greenish-cast combined.

(p) **Group.** A division of a type covering several closely related grades based on the general quality of the tobacco, including body, the percentage of injury, and other characteristics.

(q) **Injury.** Hurt or impairment from any cause except damage. Injured tobacco shall include dead, burnt, hail-cut, or ragged tobacco; or tobacco that has been torn or broken, frozen or frosted, sunburned or scalded, scorched or fire-killed, bulk-burnt or steam-burnt, pole-burnt or house-burnt, bleached or bruised; or tobacco containing discolored or deformed leaves; or tobacco hurt by insects; or tobacco having an odor foreign to the type; or tobacco affected by wild-fire, rust, frog-eye, mosaic, frenching, sand-drown, or other similar diseases.

(r) **Leaf-scrap.** Unstemmed scrap, which is a byproduct from handling unstemmed tobacco consisting of loose and tangled whole or broken leaves.

(s) **Lugs.** Any lot of tobacco, except nondescript and scrap, composed chiefly of comparatively thin and lean leaves, and showing a material amount of injury of the kind characteristic of leaves grown near the ground; or any tobacco, except nondescript and scrap, injured or containing lug leaves, in excess of the tolerance allowed in the grades of the B- and C-groups.

(t) **Mixed.** A lot of tobacco which contains 30 percent or more leaves of distinctly different quality or color from the run of the lot, including variegated leaves unless such leaves are indicated by a special factor, and which contains less than 20 percent green.

(u) **Nested.** Any lot of tobacco which has been so loaded, packed, or arranged as to conceal foreign matter or tobacco of inferior grade, quality, or condition, including lots of tobacco which contain damaged, injured, tangled, or other inferior tobacco which cannot be readily detected upon inspection on account of the way the lot was packed or arranged.

(v) **Nondescript.** Any nested or decayed tobacco; or muddy or extremely dirty tobacco; or tobacco containing an unusual amount of foreign matter; or tobacco containing over 40 percent of crude leaves; or tobacco infested with live tobacco beetles or other injurious insects; or wet tobacco; or uncured tobacco including fat-stems and wet-butts; or very inferior lots of tobacco of a quality that is not

ordinarily marketed, or tobacco having characteristics distinctly foreign to the type.

(w) **Quality.** A division or group, forming the second factor of a grade, based upon the relative degree of one or more of the elements of quality in tobacco.

(x) **Resweated.** The condition of tobacco which has passed through a second fermentation under abnormally high temperatures, or re fermented with a relatively high percentage of moisture, including tobacco which has been dipped or reconditioned after its first fermentation and put through a forced or artificial sweat.

(y) **Scrap.** A byproduct from handling tobacco in both the unstemmed and stemmed forms, consisting chiefly of portions of tobacco leaves, except stems, which accumulate in warehouses, packing and conditioning plants, and stemmeries.

(z) **Side.** Any distinct characteristic of tobacco; or a certain phase of quality, color, or length as compared with some other phase of quality, color, or length.

(aa) **Size.** The lengths of tobacco leaves.

(bb) **Sound.** Free of damage.

(cc) **Special factor.** Any side of a grade, or characteristic of importance, varying from or not covered by the specifications of the grade.

(dd) **Steamdried.** The condition of unfermented tobacco as customarily prepared for storage by means of a redrying machine or other steam-conditioning equipment.

(ee) **Stemmed.** A form of tobacco from which the stems or midribs have been removed, including both strips and strip-scrap.

(ff) **Stems.** A tobacco byproduct composed of the midribs of tobacco leaves.

(gg) **Stouts.** A term used to designate tobacco of the heavy leaf or B-group.

(hh) **Strips.** The sides of tobacco leaves from which the stems have been removed.

(ii) **Strip-scrap.** Stemmed scrap or stemless scrap, which is a byproduct from stemming tobacco or handling strips consisting chiefly of portions of strips.

(jj) **Subgrade.** Any grade modified by a special factor symbol.

(kk) **Subgroup.** A group formed by the substitution of a different group symbol to denote a modification of the specifications or to indicate a certain side or characteristic of the tobacco.

(ll) **Sweated.** The condition of tobacco which has passed through one or more fermentations natural to tobacco packed with a normal percentage of moisture.

(mm) **Sweating.** The condition of tobacco in the process of fermentation.

(nn) **Thins.** A term used to designate tobacco of the thin leaf or C-group.

(oo) **Type.** A division of a class of tobacco having certain common characteristics and closely related grades. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths, shall be treated as one type, regardless of any factors of

historical or geographical nature which cannot be determined by an examination of the tobacco.

(pp) **Type 36.** That type of aircured tobacco commonly known as Green River, Green River Aircured, Henderson, and Owensboro Dark Aircured; and produced principally in the Green River section of Kentucky.

(qq) **Undried.** The condition of unfermented tobacco which has not been airdried, or steamdried.

(rr) **Uniformity.** One of the elements of quality in tobacco having reference to the consistency of a lot with respect to other elements of quality or color. The following are the specifications for the several degrees of uniformity showing for each degree the percentage of a lot that may be of a distinctly different group, quality, or color from the run of the lot: (1) Uniform, less than 5 percent; (2) Harmonizing, less than 10 percent; (3) Unmingled, less than 20 percent; (4) Unmixed or Mingled, less than 30 percent; and (5) Mixed, over 30 percent.

(ss) **Unsound.** Damaged under 20 percent.

(tt) **Unstemmed.** A form of tobacco from which the stems or midribs have not been removed, including both whole-leaf and leaf-scrap.

(uu) **Variegated.** Having a diversity of contrasting colors or tints within a leaf; including leaves which are grey, mottled, bleached, or stained; or leaves which do not blend with the normal colors of the type.*†

29.256 Rules. The application of these official standard grades shall be in accordance with the following rules:

Rule 1. Each grade shall be treated as a subdivision of a particular type and when the grade is stated in an inspection certificate, the type shall also be stated.

Rule 2. The determination of grade shall be based upon a thorough examination of a lot of tobacco or an official sample of the lot.

Rule 3. In determining the grade of a lot of tobacco, the lot as a whole shall be considered, and minor irregularities which do not affect over one percent of the tobacco shall be overlooked.

Rule 4. Unsound tobacco shall be treated as a subgrade by placing the special factor letter "U" after or above the grade mark. For example: If a lot of tobacco is under 20 percent damaged and otherwise meets the specifications of B4F, it shall be graded B4F-U.

Rule 5. When a lot of unmixed tobacco is on the marginal line between two colors so that there is a question as to which is the predominant color, it shall be placed in the color with which the tobacco best corresponds with respect to body and maturity.

Rule 6. Any lot of tobacco shall be regarded as meeting the specifications of a certain grade when the tobacco is not lower in any degree of quality than stated in the specifications of such grade. The degree of uniformity specified for a particular grade governs the percentage of a lot which must meet the specifications with respect to other degrees of quality.

Rule 7. Any lot of tobacco which clearly and fully meets the specifications of two or more grades shall be placed in the highest one of

such grades; but any lot of tobacco which is on the marginal line between two or more grades so that the grade cannot be determined by applying other rules, shall be placed in the lowest grade in question.

Rule 8. The grade assigned to any lot of tobacco shall be a true representation of the tobacco at the time of inspection and certification thereof.

Rule 9. If, at any time, it is found that a lot of tobacco does not comply with the description and specifications of the grade previously assigned, it shall not thereafter be represented as being of such grade.

Rule 10. Any special factor symbol, approved for the purpose by the Bureau of Agricultural Economics, may be used after or above the grade mark to show a peculiar side or characteristic of the tobacco.

Rule 11. Length shall be stated in connection with each grade of the B- and C-groups, and may be stated in connection with the grades of the X-group. For this purpose tobacco sizes as approved by the Bureau of Agricultural Economics shall be used.

Rule 12. Tips, including leaf and fillers under 16 inches long but otherwise of the qualities of B3, B4, and B5, in F, R, D, and G colors shall be made a subgroup by substituting the letter "T" for the group letter "B" in the grade symbols.*†

SUBPART—ORDERS OR DESIGNATION OF TOBACCO MARKETS

29.301 Designation of tobacco markets. The Act of Congress approved August 23, 1935 (49 Stat. 731; 7 U.S.C., Sup., Chapter 21A) entitled "The Tobacco Inspection Act" contains the following provisions:

Sec. 2. That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interested therein. * * *

Sec. 5. That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no

*For statutory citation, see note to § 29.1.

†For source citation, see note to § 29.251.

grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: *Provided*, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market.

Territory	Types of tobaccos	Auction Markets	Order of designation	Citation
(a) Kentucky-Tennessee	Fire-cured, and Green River Dark Air-cured— Types 22, 23, 24 and 36.	Clarksville, Tenn..... Springfield, Tenn..... Hopkinsville, Ky Paducah, Ky..... Mayfield, Ky..... Murray, Ky..... Madisonville, Ky..... Henderson, Ky.....	June 18, 1936...	1 F.R. 649.
(b) Virginia	Fire-cured—Type 21.	Lynchburg, Va..... Bedford, Va..... Farmville, Va..... Blackstone, Va..... Drakes Branch, Va.....	June 18, 1936...	1 F.R. 649.
(c) South Carolina.....	Flue-cured—Type 13.	Lake City, S. C..... Darlington, S. C..... Pamplico, S. C.....	July 1, 1936; as amended July 15, 1936.	1 F.R. 718, 832.
(d) North Carolina.....	Flue-cured—Type 12.	Farmville, N. C..... Goldsboro, N. C.....	July 13, 1936...	1 F.R. 788.
(e) North Carolina.....	Flue-cured—Type 11 (b).	Oxford, N. C.....	Aug. 26, 1936...	1 F.R. 1226.
(f) Kentucky.....	Burley—Type 31...	Bowling Green, Ky..... Cynthiana, Ky..... Horse Cave, Ky..... Mt. Sterling, Ky.....	Nov. 14, 1936...	1 F.R. 1968.
(g) North Carolina.....	Flue-cured.....	Wendell, N. C.....	Sept. 14, 1937.	2 F.R.1850.
(h) Kentucky.....	Burley—Type 31...	Danville, Ky.....	Dec. 3, 1937....	2 F.R. 2674.

PART 30—TOBACCO STOCKS AND STANDARDS

Sec.		Sec.	
	Classification of leaf tobacco covering classes, types and groups of grades	30.4	Class 2: Fire-cured types and groups.
30.1	Definitions of terms used in classification of leaf tobacco.	30.5	Class 3: Air-cured types and groups.
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Sec.		Sec.	
30.8	Class 6: Cigar-wrapper types and groups.	30.10	Class 8: Foreign-grown cigar-leaf types.
30.9	Class 7: Miscellaneous types of domestic tobacco.	30.11	Class 9: Foreign-grown types other than cigar-leaf.

CLASSIFICATION OF LEAF TOBACCO COVERING CLASSES, TYPES, AND GROUPS OF GRADES

Section 30.1 Definitions of terms used in classification of leaf tobacco. For the purpose of this classification of leaf tobacco, the following terms shall be construed, respectively, to mean:

(a) **Leaf tobacco.** Tobacco in the forms in which it appears between the time it is cured and stripped from the stalk, or primed and cured, and the time it enters into the different manufacturing processes. The acts of stemming, sweating or fermenting, and conditioning are not regarded as manufacturing processes. Leaf tobacco does not include any manufactured or semimanufactured tobacco, stems which have been removed from leaves, cuttings, clippings, trimmings, shorts, or dust.

(b) **Unstemmed.** A form of leaf tobacco consisting of a collection of leaves from which the stems or midribs have not been removed, including leaf-scrap.

(c) **Stemmed.** A form of leaf tobacco consisting of a collection of leaves from which the stems or midribs have been removed, including strip scrap.

(d) **Class.** One of the major divisions of leaf tobacco based on the distinct characteristics of the tobacco caused by differences in varieties, soil, and climatic conditions, and the methods of cultivation, harvesting, and curing.

(e) **Type.** A subdivision of a class of leaf tobacco, having certain common characteristics which permit of its being divided into a number of related grades. Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths, shall be treated as one type, regardless of any factors of historical or geographical nature which can not be determined by an examination of the tobacco.

(f) **Group.** A group of grades, or a division of a type covering several closely related grades, based on the general quality of the tobacco, including the percentage of injury, and other factors. The factors that determine the group divisions also largely determine the usage or suitability of tobacco for certain purposes.

(g) **Scrap.** A byproduct from handling leaf tobacco in both the unstemmed and stemmed forms, consisting of loose and tangled portions of tobacco leaves, floor sweepings, and all other tobacco materials (except stems) which accumulate in auction and storage warehouses, packing and conditioning plants, and stemmeries. Scrap which accumulates from handling unstemmed leaf tobacco is known as leaf-scrap and scrap which accumulates from handling stemmed leaf tobacco is known as strip-scrap. The scrap group, covering both leaf-scrap and strip-scrap is designated by the letter "S".

(h) **Nondescript.** Any tobacco of a certain type which can not be placed in other groups of the type, or any nested tobacco, or any

muddy or extremely dirty tobacco, or any tobacco containing an unusual quantity of foreign matter, or any crude tobacco, or any tobacco which is damaged to the extent of 20 percent or more, or any tobacco infested with live tobacco beetles or other injurious insects, or any wet tobacco, or any tobacco that contains fat stems or wet butts. The nondescript group is designated by the letter "N".

(i) **Cure.** To dry the sap from newly harvested tobacco by either natural or artificial process. Proper curing is done under such conditions as will permit of the chemical and physiological changes necessary to develop the desired quality of color in tobacco.

(j) **Flue-cure.** To cure tobacco under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco.

(k) **Fire-cure.** To cure tobacco under artificial atmospheric conditions by the use of open fires, the smoke and fumes of which are allowed to come in contact with the tobacco.

(l) **Air-cure.** To cure tobacco under natural atmospheric conditions without the use of fire, except for the purpose of preventing pole burn (house burn) in damp weather.

(m) **Cigar filler.** The tobacco that forms the core or inner part of a cigar. Cigar-filler tobacco is tobacco of the kind and quality commonly used for cigar fillers. Cigar-filler types are those which produce chiefly tobacco suitable for cigar-filler purposes.

(n) **Cigar binder.** A portion of a tobacco leaf rolled around the filler of a cigar to bind or hold it together and form the first covering. Cigar-binder tobacco is tobacco of the kind and quality commonly used for cigar binders. Cigar-binder types are those which produce chiefly tobacco suitable for cigar-binder purposes.

(o) **Cigar wrapper.** A portion of a tobacco leaf forming the outer covering of a cigar. Cigar-wrapper tobacco is tobacco of the kind and quality commonly used for cigar wrappers. Cigar-wrapper types are those which produce chiefly tobacco suitable for cigar-wrapper purposes.

(p) **Damage.** The effect of mold, must, rot, black rot, or other fungous or bacterial diseases which attack tobacco in its cured state. Any tobacco having the odor of mold, must, or rot shall be included in damaged tobacco. (Note distinction between "damage" and "injury.")

(q) **Injury.** Hurt or impairment from any cause except the fungous or bacterial diseases which attack tobacco in its cured state. Injured tobacco shall include any dead, burnt, or ragged tobacco; or tobacco that has been torn or broken, frozen or frosted, sunburned or scalded, scorched or fire-killed, bulk-burnt or stem-burnt, pole burnt or house burnt, bleached or bruised; or tobacco containing discolored or deformed leaves; or tobacco hurt by insects; or tobacco affected by wild-fire, black fire, rust, frog-eye, mosaic, frenching, sand-drown, or other field diseases.

(r) **Nested.** Any lot of tobacco which has been so handled or packed as to conceal damaged, injured, tangled, or inferior tobacco, or foreign matter.

(s) Crude. Very unripe, and having the general appearance of being very immature. Crude tobacco ordinarily has a characteristic green color.

(t) Foreign matter. Any substance or material extraneous to tobacco leaves, such as dirt, sand, stalks, suckers, straws, and strings.*†

*§§ 30.1 to 30.11, inclusive, issued under the authority contained in sec. 2, 45 Stat. 1079; 7 U.S.C. 502.

†The source of §§ 30.1 to 30.11, inclusive, is Classification of leaf tobacco covering classes, types, and groups of grades, issued under the authority of the Tobacco Stocks and Standards Act, Department of Agriculture, Nov. 1929. (SRA, BAE 118)

30.2 Classification of leaf tobacco. For the purpose of this classification leaf tobacco shall be divided into the following classes:

CLASSES OF LEAF TOBACCO

- Class 1. Flue-cured types.
- Class 2. Fire-cured types.
- Class 3.² Air-cured types.
- Class 4. Cigar-filler types.
- Class 5. Cigar-binder types.
- Class 6. Cigar-wrapper types.
- Class 7. Miscellaneous domestic types.
- Class 8. Foreign-grown cigar-leaf types.
- Class 9. Foreign-grown types, other than cigar leaf.

For the purpose of this classification the classes shall be divided into the types and groups set forth in §§ 30.3–30.11.*†

30.3 Class 1: Flue-cured types and groups.

Type 11. That type of flue-cured tobacco commonly known as Old Belt Flue-cured, Western District Bright, Middle Belt Flue-cured, or Semiold Belt Flue-cured; and produced principally in the Piedmont sections of Virginia and North Carolina.

Type 12. That type of flue-cured tobacco commonly known as Eastern Flue-cured, New Belt of North Carolina Flue-cured, Eastern District Bright, or Eastern Carolina Bright; and produced principally in the coastal plains section of North Carolina, north of the South River.

Type 13. That type of flue-cured tobacco commonly known as Southeastern Flue-cured, Southeastern Bright, South Carolina Flue-cured, or New Belt of South Carolina and southeastern North Carolina; and produced principally in the coastal plains section of South Carolina and the southeastern counties of North Carolina south of the South River.

Type 14. That type of flue-cured tobacco commonly known as Southern Flue-cured, Southern Bright, Southern District Bright, New Belt of Georgia and Florida, Florida Bright, Alabama Bright, or Georgia Flue-cured; and produced principally in the southern sections of Georgia and to some extent in Florida, Alabama, and Mississippi.

² Class 3 covers Air-cured tobacco other than cigar leaf. This class may be subdivided as follows: Class 3a, Light Air-cured tobacco, including types 31 and 32, and class 3b, Dark Air-cured tobacco, including types 35, 36, and 37.

*†For statutory and source citations, see note to § 30.1.

Group applicable to types 11, 12, 13, and 14:

- A. Wrappers.
- B. Heavy leaf, cutting leaf, and fillers.
- C. Thin leaf or cutters.
- X. Lugs and ground leaves.
- S. Scrap, as defined.
- N. Nondescript, as defined.*†

30.4 Class 2: Fire-cured types and groups.

Type 21. That kind of fire-cured tobacco commonly known as Eastern Fire-cured, Virginia Fire-cured, Smoked, or Dark-fired, or Dark Virginia; and produced principally in the Piedmont and mountain sections of Virginia.

Type 22. That type of fire-cured tobacco commonly known as Southern Fire-cured, Clarksville, Hopkinsville, and Springfield Fire-cured or Dark-fired, or Kentucky-Tennessee Broadleaf; and produced principally in a section east of the Tennessee River, in southern Kentucky and northern Tennessee.

Type 23. That type of fire-cured tobacco commonly known as Western Fire-cured, Mayfield and Paducah Dark-fired or Western District Dark; and produced principally in a section between the Tennessee, Ohio, and Mississippi Rivers in western Kentucky and northwestern Tennessee.

Type 24. That type of fire-cured tobacco commonly known as Northern Fire-cured, Henderson Dark-fired or Smoked, the Stemming District, Madisonville Dark or Dark-fired, including the fire-cured of the Owensboro district; and produced principally in the Henderson district of Kentucky.

Groups applicable to types 21, 22, 23, and 24:

- A. Wrappers.
- B. Heavy leaf.
- C. Thin leaf.
- X. Lugs.
- S. Scrap, as defined.
- N. Nondescript, as defined.*†

30.5 Class 3: Air-cured types and groups.

Type 31. That type of air-cured tobacco commonly known as Burley, Burley Air-cured, Red Burley, White Burley, or Light Air-cured of Kentucky; and produced principally in central and northeastern Kentucky, southern Ohio and Indiana, western West Virginia, central and eastern Tennessee, and sections of Virginia, North Carolina, Missouri, and Arkansas.

Groups applicable to type 31:

- A. Wrappers.
- B. Leaf or fillers and tips.
- C. Lugs or cutters.
- X. Trash, flyings and spools.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 32. That type of air-cured tobacco commonly known as Southern Maryland tobacco, Maryland Air-cured, or Maryland Export; and produced principally in southern Maryland. (Upper country Maryland is classed as "miscellaneous domestic.")

Groups applicable to type 32:

- B. Heavy leaf, locally known as dull crop.
- C. Thin leaf, locally known as bright crop.
- X. Second and ground leaves.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 35. That type of air-cured tobacco commonly known as One-sucker, One-sucker Air-cured, Kentucky-Tennessee One-sucker, Indiana One-sucker, or Dark Air-cured One-sucker, including the Upper Cumberland District One-sucker; and produced principally in northern Tennessee, south central Kentucky, and southern Indiana.

Type 36. That type of air-cured tobacco commonly known as Green River, Green River Air-cured, Henderson District Air-cured, or Owensboro District Air-cured; and produced principally in the Green River section of Kentucky in both the Owensboro and Henderson districts.

Type 37. That type of air-cured or sun-cured tobacco commonly known as Virginia Sun-cured, Virginia Sun and Air-cured, or Dark Virginia Air-cured; and produced principally in the central section of Virginia north of the James River.

Groups applicable to types 35, 36, and 37.

- A. Wrappers.
- B. Heavy leaf.
- C. Thin leaf.
- X. Lugs.
- S. Scrap, as defined.
- N. Nondescript, as defined.*†

30.6 Class 4: Cigar-filler types and groups.

Type 41. That type of cigar-leaf tobacco commonly known as Pennsylvania Seedleaf, Pennsylvania Broadleaf, Pennsylvania Filler type, or Lancaster and York County Filler type; and produced principally in Lancaster County, Pa., and the adjoining counties.

Groups applicable to type 41:

- B. Binders or tops.
- C. Fillers, locally known as wrappers or B's.
- X. Stemming, farm fillers, ground leaves, and crops unsuitable for sorting.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 42. That type of cigar-leaf tobacco commonly known as Gebhardt, Ohio Seedleaf, or Ohio Broadleaf; and produced principally in the Miami Valley section of Ohio and extending into Indiana.

Type 43. That type of cigar-leaf tobacco commonly known as Zimmer, Ohio Zimmer, or Zimmer Spanish; and produced principally in the Miami Valley section of Ohio and extending into Indiana.

Type 44. That type of cigar-leaf tobacco commonly known as Dutch, Shoestring Dutch, or Little Dutch; and produced principally in the Miami Valley section of Ohio.

Groups applicable to types 42, 43, and 44:

- C. Fillers, locally known as wrappers.
- X. Stemming, farm fillers, ground leaves, and crops unsuitable for sorting.
- S. Scrap, as defined.
- N. Nondescript, as defined.

*†For statutory and source citations, see note to § 30.1.

Type 45. That type of cigar-leaf tobacco commonly known as Georgia and Florida Sun-grown Cigar-Leaf or the Georgia and Florida Filler type; and produced principally in southwestern Georgia and the central part of northern Florida.

Groups applicable to type 45:

C. Fillers.

X. Stemming, ground leaves, and crops unsuitable for sorting.

S. Scrap, as defined.

N. Nondescript, as defined.

Type 46. That type of cigar-leaf tobacco commonly known as Puerto Rican Sun-grown or the Puerto Rican Filler type, including primed (deshojado) and stalk-cut (manejo); and produced in Puerto Rico.

Groups applicable to type 46:

C. Tripas or fillers.

X. Resagos, terceros, boliches, and crops unsuitable for sorting.

S. Scrap (picadura), as defined.

N. Nondescript, as defined.

*†

30.7 Class 5: Cigar-binder types and groups.

Type 51. That type of cigar-leaf tobacco commonly known as Connecticut Broadleaf or Connecticut Valley Broadleaf; and produced principally in the Connecticut Valley section of Connecticut and Massachusetts.

Type 52. That type of cigar-leaf tobacco commonly known as Connecticut Valley Havana Seed, Connecticut Havana Seed, Primed Havana, or Stalk-cut Havana; and produced principally in the Connecticut Valley section of Connecticut and Massachusetts.

Type 53. That type of cigar-leaf tobacco commonly known as York State Tobacco, Havana Seed of New York, or the Binder type of New York and Pennsylvania; and produced principally in the Big Flats and Onondago sections of New York State, and extending into Pennsylvania.

Groups applicable to types 51, 52, and 53:

A. Wrappers.

B. Binders, locally known as seconds.

C. Fillers, locally known as tips or B's.

X. Stemming, sand-leaf fillers, ground leaves, and crops unsuitable for sorting.

S. Scrap, as defined.

N. Nondescript, as defined.

Type 54. That type of cigar-leaf tobacco commonly known as Southern Wisconsin Cigar-Leaf and Southern Wisconsin Binder type; and produced principally south and east of the Wisconsin River, and extending into Illinois.

Type 55. That type of cigar-leaf tobacco commonly known as Northern Wisconsin Cigar-Leaf, or Northern Wisconsin Binder type; and produced principally north and west of the Wisconsin River, and to some extent in Minnesota.

Groups applicable to types 54 and 55:

B. Binders.

C. Fillers, locally known as tips or B's.

X. Stemming, sand-leaf fillers, bottom leaves, and crops unsuitable for sorting.

S. Scrap, as defined.

N. Nondescript, as defined.

*†

30.8 Class 6: Cigar-wrapper types and groups.

Type 61. That type of cigar-leaf tobacco commonly known as Northern Shade, Connecticut Valley Shade-grown, or Shade of Connecticut; and produced principally in the Connecticut Valley section of Connecticut and Massachusetts.

Type 62. That type of cigar-leaf tobacco commonly known as Southern Shade Georgia and Florida Shade-grown, or Shade of Georgia and Florida; and produced principally in southwestern Georgia and in the central part of northern Florida.

Groups applicable to types 61 and 62:

- A. Wrappers.
- B. Binders.
- C. Fillers, or tips.
- X. Trashy fillers or loose leaves.
- S. Scrap, as defined.
- N. Nondescript, as defined.

*†

30.9 Class 7: Miscellaneous types of domestic tobacco. No type or group divisions have been worked out for class 7. For the purposes of the tobacco-stocks reports all miscellaneous domestic tobacco shall be designated as follows:

Type 70. All domestic-grown tobacco which has not been otherwise classified. Included in the miscellaneous types are such types as Ohio Flue-cured and Fire-cured (known as Eastern Ohio). Upper Country Maryland, Louisiana Perique, California Turkish, and Virginia One-sucker, and the production of the insular possessions of the United States not otherwise classified.*†

30.10 Class 8: Foreign-grown cigar-leaf types. No type or group divisions have been worked out for class 8. For the purposes of the tobacco-stocks reports all foreign-grown cigar-leaf tobacco shall be designated as follows:

Type 80. All imported Sumatra, Java, Cuba (Havana) and other foreign-grown cigar-leaf tobacco in the continental United States, including that in customs bonded warehouses and factories and that withdrawn from bond.*†

30.11 Class 9: Foreign-grown types other than cigar-leaf. No type or group divisions has been worked out for class 9. For the purposes of the tobacco stocks reports all foreign-grown types other than cigar-leaf tobacco shall be designated as follows:

Type 90. All leaf tobaccos imported from Turkey, Greece, Bulgaria, Russia, China, or other countries which are used principally for cigarettes, pipe smoking, or chewing purposes.*†

PART 31—WOOL STANDARDS

Sec.		Sec.	
	Official standards of the United States for grades of wool and wool top.	31.5	Grade 58's, or one-half blood.
		31.6	Grade 56's, or three-eighths blood.
		31.7	Grade 50's, or one-fourth blood.
31.1	Grade 80's, or fine.	31.8	Grade 48's, or one-fourth blood.
31.2	Grade 70's, or fine.	31.9	Grade 46's, or low one-fourth blood.
31.3	Grade 64's, or fine.	31.10	Grade 44's, or common.
31.4	Grade 60's, or one-half blood.		

*†For statutory and source citations, see note to § 30.1.

Sec.	Sec.
31.11 Grade 40's, or braid.	31.51 Enumeration of standards; method of obtaining; conditions.
31.12 Grade 36's, or braid.	31.52 Issuance of standards (practical forms) without charge.
Rules and regulations for the distribution of practical forms of wool and wool top standards	31.53 Cost of standards (practical forms).

CROSS REFERENCES

Regulations as to wool standards, grading: See Part 104.

Regulations of the Bureau of Customs concerning wool and wool hair: See Customs Duties, 19 CFR 11.47–11.50.

OFFICIAL STANDARDS OF THE UNITED STATES FOR GRADES OF WOOL AND WOOL TOP

Section 31.1 Grade 80's, or fine. (a) 80's shall be wool which in diameter of fiber is not greater than the sample marked "80's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool."

(b) 80's shall also be wool top which in diameter of fiber is not greater than the sample marked "80's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool Top."*† [Sec. 1]

*§§ 31.1 to 31.53, inclusive, issued under the authority contained in secs. 2, 3, 45 Stat. 593, 594; 7 U.S.C. 415c, 415d.

†The source of §§ 31.1 to 31.53, inclusive, is Official standards of the United States for grades of wool and wool top and rules and regulations for distribution of practical forms of wool and wool top standards under Wool Standards Act of May 17, 1928, Department of Agriculture, Sept. 1932. (SRA, BAE 135)

31.2 Grade 70's, or fine. (a) 70's shall be wool which in diameter of fiber is greater than the sample marked "80's" but not greater than the sample marked "70's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool."

(b) 70's shall also be wool top which in diameter of fiber is greater than the sample marked "80's" but not greater than the sample marked "70's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool Top."*† [Sec. 2]

31.3 Grade 64's, or fine. (a) 64's shall be wool which in diameter of fiber is greater than the sample marked "70's" but not greater than the sample marked "64's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool."

(b) 64's shall also be wool top which in diameter of fiber is greater than the sample marked "70's" but not greater than the samples marked "64's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool Top."*† [Sec. 3]

31.4 Grade 60's, or one-half blood. (a) 60's shall be wool which in diameter of fiber is greater than the sample marked "64's" but not greater than the sample marked "60's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool."

(b) 60's shall also be wool top which in diameter of fiber is greater than the sample marked "64's" but not greater than the sample marked "60's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool Top."*† [Sec. 4]

31.5 Grade 58's, or one-half blood. (a) 58's shall be wool which in diameter of fiber is greater than the sample marked "60's" but not greater than the sample marked "58's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool."

(b) 58's shall also be wool top, which in diameter of fiber is greater than the sample marked "60's" but not greater than the sample marked "58's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool Top."*† [Sec. 5]

31.6 Grade 56's, or three-eighths blood. (a) 56's shall be wool which in diameter of fiber is greater than the sample marked "58's" but not greater than the sample marked "56's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool."

(b) 56's shall also be wool top which in diameter of fiber is greater than the sample marked "58's" but not greater than the sample marked "56's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool Top."*† [Sec. 6]

31.7 Grade 50's, or one-fourth blood. (a) 50's shall be wool which in diameter of fiber is greater than the sample marked "56's" but not greater than the sample marked "50's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool."

(b) 50's shall also be wool top which in diameter of fiber is greater than the sample marked "56's" but not greater than the sample marked

*†For statutory and source citations, see note to § 31.1.

“50’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Standards of the United States for Grades of Wool Top.”*† [Sec. 7]

31.8 Grade 48’s, or one-fourth blood. (a) 48’s shall be wool which in diameter of fiber is greater than the sample marked “50’s” but not greater than the sample marked “48’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Standards of the United States for Grades of Wool.”

(b) 48’s shall also be wool top which in diameter of fiber is greater than the sample marked “50’s” but not greater than the sample marked “48’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Standards of the United States for Grades of Wool Top.”*† [Sec. 8]

31.9 Grade 46’s, or low one-fourth blood. (a) 46’s shall be wool which in diameter of fiber is greater than the sample marked “48’s” but not greater than the sample marked “46’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Standards of the United States for Grades of Wool.”

(b) 46’s shall also be wool top which in diameter of fiber is greater than the sample marked “48’s” but not greater than the sample marked “46’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Standards of the United States for Grades of Wool Top.”*† [Sec. 9]

31.10 Grade 44’s, or common. (a) 44’s shall be wool which in diameter of fiber is greater than the samples marked “46’s” but not greater than the sample marked “44’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Standards of the United States for Grades of Wool.”

(b) 44’s shall also be wool top which in diameter of fiber is greater than the sample marked “46’s” but not greater than the sample marked “44’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Standards of the United States for Grades of Wool Top.”*† [Sec. 10]

31.11 Grade 40’s, or braid. (a) 40’s shall be wool which in diameter of fiber is greater than the sample marked “44’s” but not greater than the sample marked “40’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked “Original Official Standards of the United States for Grades of Wool.”

(b) 40’s shall also be wool top which in diameter of fiber is greater than the sample marked “44’s” but not greater than the sample marked “40’s” of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia

in a container marked "Original Official Standards of the United States for Grades of Wool Top."*† [Sec. 11]

31.12 Grade 36's, or braid. (a) 36's shall be wool which in diameter of fiber is greater than the sample marked "40's" but not greater than the sample marked "36's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool."

(b) 36's shall also be wool top which in diameter of fiber is greater than the sample marked "40's" but not greater than the sample marked "36's" of a series of samples in the custody of the United States Department of Agriculture in the District of Columbia in a container marked "Original Official Standards of the United States for Grades of Wool Top."*† [Sec. 12]

RULES AND REGULATIONS FOR THE DISTRIBUTION OF PRACTICAL FORMS OF WOOL AND WOOL TOP STANDARDS

31.51 Enumeration of standards; method of obtaining; conditions. (a) Practical forms of the official standards of the United States for grades of wool and wool top enumerated in this paragraph, each certified under the seal of the United States Department of Agriculture and under the signature of the Secretary of Agriculture, thereto affixed by himself or by some other official or employee of the Department thereunto duly authorized by him, will be furnished to any person requesting the same, upon prepayment of the cost thereof (except as noted in §31.52) as determined by the Secretary, subject to the other conditions of this section:

Official standards of the United States for grades of wool, complete, 12 grades.

Official standards of the United States for grades of wool, partial, 7 grades.

Official standards of the United States for grades of wool top, complete, 12 grades.

(b) Each application for practical forms of the official wool or wool top standards shall be upon a blank furnished or approved by the Bureau of Agricultural Economics, shall be signed by the applicant, and (except as noted in §31.52) shall be accompanied by certified check, draft, post-office money order, or express money order, payable to the "disbursing clerk, U. S. Department of Agriculture," in an amount sufficient to cover the cost of the forms requested, as indicated in §31.53. Each application shall have incorporated therein the following conditions:

(1) That the practical forms shall not be considered or used as representing the official standards after date of cancelation, nor after the expiration of 24 months following the date of certification, unless renewed.

(2) That the said forms shall be subject to inspection on any business day, between the hours of 9 a. m. and 4 p. m., by the Secretary of Agriculture, or by any officer or agent of the Department

*†For statutory and source citations, see note to § 31.1.

of Agriculture authorized either by him or by the Chief of the Bureau of Agricultural Economics.

(3) That the signature of the Secretary, certifying to such practical forms, the seal of the Department of Agriculture, or the date of expiration, may be canceled if it is found upon such inspection that the said forms for any reason are not representative of the official standards.*† [Sec. 1]

31.52 Issuance of standards (practical forms) without charge.

(a) Practical forms of the official wool or wool top standards may be issued without charge to universities, colleges, or other educational institutions of the several States, co-operating with the Department in extension work, provided that not more than two sets of the practical forms may be issued without charge to any one institution.

(b) Practical forms of the official wool standards (partial) may be issued without charge to county agricultural agents, upon application approved by the director of extension.

(c) Practical forms of the official wool standards (partial) may be issued without charge to instructors of vocational agriculture upon application approved by the supervisor for vocational agriculture and upon a satisfactory showing that the practical forms can be used advantageously.

(d) Practical forms of the official wool and wool top standards may be issued, in the discretion of the Chief of the Bureau of Agricultural Economics, without charge to governmental and semi-governmental agencies, and to institutions cooperating with the Department of Agriculture whose interest in wool grades and wool standardization warrant such action.*† [Sec. 2]

31.53 Cost of standards (practical forms). (a) The cost of the practical forms of the official wool and wool top standards for shipment within the continental United States shall be as follows, f.o.b., Washington, D. C.:

Official standards of the United States for grades of wool, complete, 12 grades, \$10.

Official standards of the United States for grades of wool, partial, 7 grades, \$5.

Official standards of the United States for grades of wool top, complete, 12 grades, \$10.

For shipment outside the continental United States the cost of the forms shall be \$12, \$7, and \$12, respectively, delivered to destination.*† [Sec. 3]

PART 33—EXPORT APPLES AND PEARS

Sec.		Sec.	
	Definitions	33.6	Delivery of certificate.
33.1	Terms defined.	33.7	No acceptance for export without certificate.
	Administration	33.8	Method of inspection and certification.
33.2	Chief of Bureau.	33.9	Noncertificated shipments; handling.
	Miscellaneous	33.10	Special certificates.
33.3	Inspection service.		
33.4	Form of certificate.		
33.5	Analysis; certificate.		

Sec.		Sec.	
33.11	Issuance of certificates; requirements.	33.14	Fee for certificate.
33.12	Minimum quality requirements for shipments in export.	33.15	Complaint, notice, hearing, order.
33.13	Packing and marking requirements for shipments in export.	33.16	Service of notice or order.
		33.17	Less-than-carload quantity; defined.

DEFINITIONS

Section 33.1 Terms defined. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

The following terms included in the Act shall, for the purpose of this part, be construed to mean:

(a) **Act.** An Act approved June 10, 1933 (48 Stat. 123; 7 U.S.C. 581-589), entitled "An Act to promote the foreign trade of the United States in apples and/or pears, to protect the reputation of American-grown apples and pears in foreign markets, to prevent deception or misrepresentation as to the quality of such products moving in foreign commerce, to provide for the commercial inspection of such products entering such commerce, and for other purposes", and which will be referred to by the Department as the Export Apple and Pear Act.

(b) **Person.** Individuals, partnerships, corporations, and associations.

(c) **Carriers.** All common and private carriers, including trucks, vessels, tramp and chartered steamers whether carrying for hire or otherwise.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Foreign commerce.** Commerce between any State, or the District of Columbia, and any place outside of the United States or its possessions.

(f) **Apples and/or pears.** Fresh whole apples or pears, whether or not they have been in storage.

(g) **Certificate.** This term means a statement that a designated lot of apples and/or pears meets the requirements of the Export Apple and Pear Act included in and made a part (1) of an Export Form Certificate issued under the farm products inspection law (Annual Agricultural Appropriation Act, 7 U.S.C. 414 and Sup.) or (2) of a memorandum in a form approved by the Chief of Bureau and issued in lieu of an Export Form Certificate.*† [Reg. 1]

*§§ 33.1 to 33.17, inclusive, issued under the authority contained in sec. 7, 48 Stat. 124; 7 U.S.C. 587.

†The source of §§ 33.1 to 33.17, inclusive, is Grades, requirements, and regulations of the Secretary of Agriculture for carrying out the provisions of the Export Apple and Pear Act of June 10, 1933, Mar. 30, 1938, 3 F.R. 671. (SRA, BAE 143)

ADMINISTRATION

33.2 Chief of Bureau. The Chief or Acting Chief of the Bureau of Agricultural Economics shall perform for and under the

supervision of the Secretary such duties as the Secretary may require in enforcing the provisions of the Act and of this part.*† [Reg. 2]

MISCELLANEOUS

33.3 Inspection service. The regulations of the Secretary under the farm products inspection law for the inspection and certification of fresh fruits and vegetables (Part 51) are hereby adopted for the purposes of the Act except when in conflict with specific regulations herein set forth, and all persons authorized to issue certificates of grade and/or condition under the farm products inspection law are authorized to issue the certificates required for apples or pears under the Act.*† [Reg. 3, sec. 1]

33.4 Form of certificate. Farm products inspection certificates bearing in prominent letters across the face the words "Export Form Certificate" shall be used only for apples or pears inspected and certified in accordance with the provisions of the Act, and shall include the following statement either printed or typed: "The apples and/or pears covered by this certificate meet the requirements of the Export Apple and Pear Act."*† [Reg. 3, sec. 2]

33.5 Analysis; certificate. If the fruit is to be analyzed for spray residues and the chemist's report is not available at the time the inspection for grade is finished, the inspector may, if practicable, issue a certificate subject to being recalled and vacated within 48 hours should the chemical analysis show that the fruit does not comply with the tolerances for spray residues established under the Food and Drugs Act of June 30, 1906 (34 Stat. 768; 21 U.S.C. Chapter 1).*† [Reg. 3, sec. 3]

33.6 Delivery of certificate. If, at time of billing for shipment in export, a certificate shall have been issued under the provisions of the Act, the original or a copy of such certificate on a form approved by the Chief of Bureau shall be delivered by the shipper or his agent to the initial carrier for delivery to the proper official of any vessel of any kind on which the apples or pears covered by the certificates are to be exported.*† [Reg. 3, sec. 4]

33.7 No acceptance for export without certificate. (a) A shipment of apples or pears shall not be accepted for export by any vessel of any kind unless accompanied by a certificate or a copy thereof on a form approved by the Chief of Bureau which shall be surrendered to the steamship company showing that such apples or pears meet the requirements of the Act.

(b) When a certificate has been issued covering a lot of apples or pears and the shipper desires to export part of the lot by one steamer or vessel of any kind, and part by another steamer or vessel of any kind, the original or a copy of the certificate on a form approved by the Chief of Bureau shall be furnished each steamship line, tramp or chartered steamer or vessel of any kind concerned.

(c) No vessel of any kind shall accept for shipment a part of a lot of apples or pears upon the mere representation by the shipper or his agent or by the initial carrier that a certificate has been issued covering the entire lot but shall require that the original or a copy

of such certificate on a form approved by the Chief of Bureau be furnished.*† [Reg. 3, sec. 5]

33.8 Method of inspection and certification. When shipments, except as provided under § 33.17, are made to foreign countries under a through bill of lading or under a bill of lading marked for export, the shipper shall secure inspection and deliver to the local agent of the carrier a copy of the Export Form Certificate or memorandum covering such shipment. The local agent shall attach the certificate or memorandum to the waybill or make a notation on the waybill that the fruit has been inspected and that such export certificate or memorandum has been issued.

Inspection of shipments not under through bill of lading to a foreign country or not under bill of lading marked for export may be obtained at point of origin if inspection is available, or at any convenient point en route or at destination.*† [Reg. 4]

33.9 Noncertificated shipments; handling. Any person operating any vessel of any kind shall within 72 hours after sailing from any port send to the Chief of Bureau of Agricultural Economics, at Washington, D. C., a list of shipments of apples and/or pears on board such vessel which are not accompanied by certificates and shall give all particulars with reference thereto, including destination, quantity, description, marks, names and addresses of shippers and consignees and names of railroads or persons delivering such shipments to such vessels, with car numbers or other means of identification. The furnishing of such information shall not relieve such person from liability under the Act if in the judgment of the Secretary the facts warrant prosecution.*† [Reg. 5]

33.10 Special certificates. Special certificates to comply with the requirements of foreign countries shall, as authorized by section 3 of the Act (48 Stat. 124; 7 U.S.C. 583), be issued as a part of, or in addition to, the farm-products inspection certificates. A reasonable additional fee may be charged when the inspection necessary for such certificates requires additional time or an examination or certification at some time or place other than that at which the original inspection was made.*† [Reg. 6]

33.11 Issuance of certificate; requirements. A certificate issued under this Act and this part does not excuse any person for failure to comply with all regulatory laws or requirements applicable to the products shipped. No certificate shall be issued under this Act and this part except upon a showing satisfactory to the Chief of the Bureau of Agricultural Economics that the apples and/or pears comply with the tolerances for arsenical and lead spray residues established by the Department of Agriculture.*† [Reg. 7]

33.12 Minimum quality requirements for shipments in export. (a) Any lot of apples must meet each minimum requirement of the United States Utility or United States Utility Early grade for apples subject to the tolerances for these grades except that apples shall not contain apple maggots and not more than 2 percent by count may have apple maggot-injury and not more than 2 percent may be infested with San Jose scale, and except that any lot of apples in con-

*†For statutory and source citations, see note to § 33.1.

tainers conspicuously marked "cannery" must meet each minimum requirement of U. S. No. 2 for cannery apples subject to a tolerance of 10 percent for defects of this grade.

(b) Any lot of pears must meet each minimum requirement of the United States No. 2 grade for pears subject to the tolerances for this grade except that in case of pears in containers conspicuously marked "cannery" blemishes affecting only the surface of the fruit shall not be considered "serious damage" as this requirement is defined by said grade, and that pears other than those designated "cannery" shall not contain apple maggots and not more than 2 percent by count may have apple-maggot injury and not more than 2 percent may be infested with San Jose scale.

(c) Any lot of apples or pears shipped to a trans-Pacific port, except as provided in § 33.17, need not comply with the maturity standards of these grades if the packages are conspicuously marked or branded with the words "Immature fruit."*† [Reg. 8]

33.13 Packing and marking requirements for shipments in export. (a) The packages shall be plainly and conspicuously marked with (1) the name and address of the grower or packer; (2) the variety; (3) the grade names not lower than those specified in § 33.12; and (4) the numerical count or the minimum size.

(b) Each package shall be packed so that the apples and/or pears in the shown face shall be reasonably representative in size, color, and quality of the contents of the package.*† [Reg. 9]

33.14 Fee for certificate. The fee for a certificate issued under the Act shall be the fee charged at that time and place where the certificate is issued for an inspection made under the farm products inspection law: Provided, That when any lot of apples and/or pears arrives at any terminal market or point of export covered by a farm-products inspection certificate which shows that the fruit meets the requirements of the Act a certificate complying with the terms of the Act may be substituted for such farm-products inspection certificate or the same may be stamped with the words "Export Form Certificate" for a fee of \$1.*† [Reg. 10]

33.15 Complaint, notice, hearing, order. Upon receipt of complaint from any person alleging that any apples and/or pears have been shipped in foreign commerce in violation of any of the provisions of the Act, the Secretary shall cause such investigation of the facts to be made as he deems proper. If in his opinion there has been a violation of the Act, he shall inform the party accused of the nature of the charges against him and of the specific cases in which violation of the Act is charged. He shall give the party accused an opportunity for a hearing not less than 10 days after notice of such hearing has been served upon such person. At such hearing the person complained of shall be entitled to be present in person or by counsel and submit evidence and arguments in his behalf. Any order issued by the Secretary to withhold the issuance of certificates from such person as provided in section 6 of the Act (48 Stat. 124; 7 U.S.C. 586) shall be effective from the date of its service upon the party found to have been guilty of such violation of the terms of the Act. Such order shall state the inclusive dates within which it is

to remain in effect, and during this period no person employed or licensed by the Secretary as an inspector for purposes of the farm products inspection law shall issue to such persons any certificate as to compliance with the provisions of the Act.*† [Reg. 11]

33.16 Service of notice or order. Service of any notice or order required by the Act or prescribed by this part shall be deemed sufficient if made by registered mail or personally upon the person served. Service so made upon any member of a partnership or any officer of an association or corporation shall be sufficient. If it is impossible to make personal service upon the party named in the notice or order, service may be made by leaving a copy thereof with an employee or agent at such party's usual place of business or abode. If the party so named is a partnership, association, or corporation, service may be made likewise with respect to any member of the partnership or any officer, employee, or agent of the association or corporation.*† [Reg. 12]

33.17 Less-than-carload quantity; defined. Any shipment of apples, and/or pears of less than 400 bushels in packages is hereby defined as a less-than-a-carload quantity for the purposes of the Act. Such shipments to Canada, Bahamas or the Bermuda Islands, Cuba, the West Indies, Mexico, or any country in Central America or South America except Argentina, or to any African port not on the Mediterranean Sea, or to any trans-Pacific port, need not comply with the requirements of the Act: Provided, That shipments of less than 200 pounds gross weight to any foreign destination shall not be subject to the provisions of this Act.*† [Reg. 13]

PART 41—STANDARD CONTAINERS

Sec.		Sec.	
	SUBPART—Regulations under the U. S. Standard Container Act of 1916		Definitions
	Definitions	41.12	Terms defined.
41.1	Meaning of words.		Administration
41.2	Terms defined.	41.13	Chief of Bureau.
	Tolerances and variations		Specifications
41.3	Testing for tolerances and variations.	41.14	Submission to Chief of Bureau.
41.4	Tolerances and variations of containers.	41.15	Dimension specifications; approval.
41.5	Tolerances and variations of climax baskets.		Capacity and appearance
	Marking	41.16	Samples to be submitted.
41.6	Size of marking.	41.17	Deceptive appearance; determining.
	SUBPART—Regulations under the U. S. Standard Container Act of 1928		Tolerances and variations
		41.18	Testing capacity of container.
		41.19	Schedule of tolerances under the Act.
		41.20	Splint baskets for fruits and vegetables.

SUBPART—REGULATIONS UNDER THE U. S. STANDARD CONTAINER ACT OF 1916

DEFINITIONS

Section 41.1 Meaning of words. Words used in this subpart in the singular form shall be deemed to import the plural, and vice

*†For statutory and source citations, see note to § 33.1.

versa, as the case may demand.* [Reg. 1, sec. 1, SRA, BAE 104, July 22, 1936, SRA, BAE 116, Oct. 10, 1928]

*§§ 41.1 to 41.6, inclusive, issued under the authority contained in sec. 4, 39 Stat. 674; 15 U.S.C. 254.

41.2 Term defined. For the purposes of this subpart, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) Standard Container Act of 1916. The Act entitled “An Act to fix standards for climax baskets for grapes and other fruits and vegetables, and to fix standards for baskets and other containers for small fruits, berries, and vegetables, and for other purposes”, approved August 31, 1916 (39 Stat. 673, 48 Stat. 930; 15 U.S.C. 251–256).

(b) Containers. Climax baskets for grapes and other fruits and vegetables, and for mushrooms, and baskets or other containers for small fruits, berries, and vegetables.*† [Reg. 1, sec. 2]

†The source of §§ 41.2 to 41.6, inclusive, is Rules and regulations of the Secretary of Agriculture under the United States Standard Container Act of August 31, 1916, as amended June 11, 1934, July 22, 1936, 1 F.R. 867. (SRA, BAE 104, rev.)

TOLERANCES AND VARIATIONS

41.3 Testing for tolerances and variations. For the purpose of ascertaining whether a container is within the tolerances and variations as to capacity allowed by the regulations in this part it shall be tested by the bulk-for-bulk method, as described in United States Department of Agriculture Miscellaneous Publication No. 75, or by the dimensional measurement method, which is accomplished by taking the dimensions of the container and from these computing the capacity. Only the actual capacity of the container when level full shall be considered, and such portion of the contents as may be heaped above the level of the top of the sides shall be disregarded, notwithstanding any raised cover which might permit the extension upwards of the contents.*† [Reg. 2, sec. 1]

41.4 Tolerances and variations of containers. (a) As prescribed in this section, the following tolerances and variations in the capacities of containers are found to be reasonable and necessary and are hereby allowed.

(b) The excess or deficiency in capacity of any container, over or under the capacity prescribed for such container in the Standard Container Act (39 Stat. 673, 48 Stat. 930; 15 U.S.C. 251–256), as specified below in the column designated “Standard capacity”, may be as much as, but not greater than, the amount stated in cubic inches in the same line in the column designated “Excess” or “Deficiency”, as the case may be, but among any lot of containers which are not all of the standard capacity prescribed for such containers

by the Standard Container Act, the number over shall be as nearly equal as may be practical to the number under such standard capacity, within the tolerances and variations allowed therefor in this section.

SCHEDULE OF TOLERANCES UNDER THE UNITED STATES STANDARD
CONTAINER ACT

Standard capacity	Tolerances and variations	
	Excess	Deficiency
	Cubic inches	Cubic inches
12 quarts-----	23	12
4 quarts-----	10	5
3 quarts-----	7½	3¾
2 quarts-----	5	2½
1 quart-----	3	2
1 pint-----	2	1½
½ pint-----	1	¾

(c) In case of a container having a capacity to which a standard is applicable which is not specified in the column headed "Standard capacity" in the foregoing table, the excess or the deficiency allowed shall be that permitted for the next smaller standard capacity specified in the table, but this shall not apply to containers for which variations and tolerances shall be permitted and established under the Act entitled "An Act to fix the standard barrel for fruits, vegetables, and other dry commodities", approved March 4, 1915 (38 Stat. 1186; 15 U.S.C. 234-236).*† [Reg. 2, sec. 2]

41.5 Tolerances and variations of climax baskets. (a) As prescribed in this section, the following tolerances and variations in dimensions of climax baskets for grapes and other fruits and vegetables and for mushrooms are found to be reasonable and necessary and are hereby allowed, subject, however, to the tolerances and variations in capacity allowed in § 41.4.

(b) The excess or deficiency in any dimension specified below in the column designated "Dimensions", over or under the measurement prescribed for such dimensions in section 1 of the Standard Container Act (39 Stat. 673, 48 Stat. 930; 15 U.S.C. 251), may be as much as, but not greater than, the amount specified opposite such dimension in the column designated "Excess" or "Deficiency", as the case may be.

*For statutory citation, see note to § 41.1.

†For source citation, see note to § 41.2.

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SCHEDULE OF TOLERANCES AND VARIATIONS, STANDARD CLIMAX BASKETS

Basket dimensions (outside measurements)	Excess	Deficiency
Combined length and width of top:	Inches	Inches
2-quart and 1-pound mushroom.....	$\frac{1}{2}$	$\frac{1}{4}$
4-quart.....	$\frac{5}{8}$	$\frac{3}{8}$
12-quart.....	$\frac{3}{4}$	$\frac{1}{2}$
Height, all sizes.....	$\frac{1}{8}$	$\frac{1}{8}$
Width of bottom, all sizes.....	$\frac{1}{8}$	$\frac{1}{8}$
Length of bottom, all sizes.....	$\frac{1}{8}$	$\frac{1}{8}$
Thickness of bottom, all sizes.....	$\frac{1}{32}$	$\frac{1}{32}$
Length of cover, all sizes.....	$\frac{1}{8}$	$\frac{1}{8}$
Width of cover, all sizes.....	$\frac{1}{8}$	$\frac{1}{8}$

*† [Reg. 2, sec. 3]

MARKING

41.6 Size of marking. In the case of the 1-pound climax basket for mushrooms which are required to be plainly marked or stamped with the words "for mushrooms only," such marking or stamping shall be not less than $2\frac{1}{2}$ inches in length over all, and composed of letters not less than three-eighths of an inch in height.*† [Reg. 3, sec. 1]

SUBPART—REGULATIONS UNDER THE U. S. STANDARD CONTAINER ACT OF 1928

DEFINITIONS

41.12 Terms defined. For the purpose of the regulations in this subpart, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) **Standard Container Act of 1928, or the Act.** The Act entitled, "An Act to fix standards for hampers, round stave baskets, and splint baskets, for fruits and vegetables, and for other purposes," approved May 21, 1928 (45 Stat. 685; 15 U.S.C. 257-257i).

(b) **Secretary.** The Secretary of Agriculture of the United States.

(c) **Chief of Bureau.** The Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

(d) **Containers.** Hampers, round stave baskets, or the variants of these types known as straight side or tub baskets, and splint or market baskets for fruits and vegetables.

(e) **Hamper.** A container, circular, elliptical, or polygonal at top and/or bottom, the top diameter of which is somewhat greater than the bottom and usually less than the depth, having slatted or solid sides ventilated or nonventilated, and a fabricated or solid bottom which may be loose or fixed in place, or formed by a continuation of the sides.

(f) **Round stave basket.** A container usually approximately circular at top and bottom and usually of greater breadth than depth, the sides and bottom of which may be formed from a web of continuous or noncontinuous staves or of noncontinuous staves and a separate solid or built-up bottom piece which may be loose or fixed.

(g) **Splint basket.** A container, usually approximately rectangular, the sides and bottom of which are formed from a mat, woven or braided, of continuous narrow staves or splints, or of two or more veneer blanks crossed at right angles.

(h) **Dimension specifications.** The numerical designations of inside and outside measurements necessary properly to classify a container as to its capacity, shape, and appearance.

(i) **Deceptive appearance.** A basket or hamper the gross dimensions of which are such as to give to the untrained eye the appearance of a greater or lesser capacity than that of a standard container, or which is not readily distinguishable from another standard container, is of deceptive appearance.* [Reg. 1, sec. 2, SRA, BAE 116, Oct. 10, 1928, as amended May 1, 1933]

*§§ 41.12 to 41.20, inclusive, issued under the authority contained in sec. 9, 45 Stat. 687; 15 U.S.C 257h.

ADMINISTRATION

41.13 Chief of Bureau. The Chief of Bureau shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of this Act and the rules and regulations in §§ 41.13–41.20.*† [Reg. 2, sec. 1]

†The source of §§ 41.13 to 41.20, inclusive, (except for the amendments noted in the text,) is Rules and regulations of the Secretary of Agriculture under the United States Standard Container Act of 1928, Nov. 1928. (SRA, BAE 116)

SPECIFICATIONS

41.14 Submission to Chief of Bureau. (a) In order to comply with section 4 of the Act (45 Stat. 686; 15 U.S.C. 257c) each manufacturer of hampers, round stave baskets and/or splint baskets shall submit specifications therefor to the Chief of Bureau for his approval, such specifications to be submitted over the manufacturer's signature on forms provided for that purpose.

(b) Manufacturers shall submit dimension specifications for all containers covered by the Act which are being made prior to November 1, 1929, and which they wish to continue to make after that date, and dimension specifications shall also be submitted for any such containers which may be developed subsequently, and the manufacture of containers covered by the Act shall not be undertaken on and after November 1, 1929, unless and until the specifications therefor have been approved by the Chief of Bureau.

(c) The Chief of Bureau will approve all such dimension specifications if he finds that the containers made in accordance therewith are of the proper cubical capacity and are not deceptive in appearance.

(d) The dimension specifications of any container which have been approved under the provisions of the Act shall not be changed nor altered in any way without the prior approval of the Chief of Bureau.

(e) Manufacturers of containers coming under this Act shall secure prior approval of specifications for such containers before ordering or obtaining forms therefor.*† [Reg. 3, sec. 1]

*For statutory citation, see note to § 41.12.

†For source citation, see note to § 41.13.

41.15 Dimension specifications; approval. The dimension specifications which are approved will be specifically certified by the Chief of Bureau, and such certificate will bear an identification number which may be used by the manufacturer to whom it is issued in stamping or otherwise marking the container covered by the certificate. Such marking, if used, shall be in accordance with the following style:

708
U. S.
4 qts.

*† [Reg. 3, sec. 2]

CAPACITY AND APPEARANCE

41.16 Samples to be submitted. (a) For the purpose of determining the capacity of containers and whether or not they are deceptive in appearance, and conform to the dimension specifications which have been submitted therefor, carefully made samples shall be submitted to the Chief of Bureau at his request.

(b) Such containers when tested and/or measured will be considered satisfactory when the results of said tests and measurements are such as to indicate that the factory run of such containers may reasonably be expected to contain as many over standard as there are under standard capacity, and conform to the approved specifications.

(c) Sample containers referred to in paragraph (a) may be called for prior to the approval of the dimension specifications which have been submitted therefor, and additional samples may be called for from time to time in the discretion of the Chief of Bureau for subsequent test as to capacity and conformity with said specifications.*† [Reg. 4, sec. 1]

41.17 Deceptive appearance; determining. For the purpose of determining whether or not a container is deceptive in appearance, as provided in section 4 of the Act (45 Stat. 686; 15 U.S.C. 257c), the dimension specifications for such a container, when submitted by a manufacturer as required by that section, shall be examined by the Chief of Bureau or his authorized representative and shall be recommended for approval provided the container made in accordance with such specifications is not of deceptive appearance as defined in § 41.16, and provided further that said container is of the proper cubical capacity as provided in sections 1 and 2 of this Act (45 Stat. 685; 15 U.S.C. 257, 257a).*† [Reg. 4, sec. 2]

TOLERANCES AND VARIATIONS

41.18 Testing; capacity of container. (a) Except as provided in this subpart for the purpose of ascertaining whether a container is within the tolerances and variations as to capacity allowed by this subpart it shall be tested by the bulk-for-bulk method, as described in U. S. D. A. Misc. Pub. No. 75, or for the dimensional measurement method, which is accomplished by taking the dimensions of the

container and from these computing the capacity. Only the actual capacity of the container when level full shall be considered, and such portion of the contents as may be heaped above the level of the top of the sides shall be disregarded notwithstanding any raised cover which might permit the extension upward of the contents.

(b) The capacity of a container which is constructed with the inside top hoop set down to accommodate the cover shall be determined to the top of such inside top hoop. The total capacity shall first be determined in the usual manner and from such total capacity thus obtained there shall be deducted the number of cubic inches contained in the space included between the upper edge of the inside top hoop and the upper ends of the staves. Such computation shall be made by the formula: Diameter squared \times 0.7854 \times the average depth.* [Reg. 5, sec. 1, SRA, BAE 116, as amended Dec. 14, 1935]

41.19 Schedule of tolerances under the Act. (a) As prescribed in this section, the following tolerances and variations in the capacities of containers are found to be reasonable and necessary and are hereby allowed.

(b) The excess or deficiency in capacity of any container, over or under the capacity prescribed for such container in the Standard Container Act of 1928 (45 Stat. 685; 15 U.S.C. 257–257i), as specified in Table 1 in the column designated "Standard capacity," may be as much as, but not greater than, the amount stated in cubic inches in the same line in the column designated "Excess" or "Deficiency," as the case may be, but, among any lot of containers which are not all of the standard capacity prescribed for such containers by the Standard Container Act of 1928, the number over shall be as nearly equal as may be practical to the number under such standard capacity, within the tolerances and variations allowed therefor in this section.

TABLE 1.—SCHEDULE OF TOLERANCES UNDER THE UNITED STATES STANDARD CONTAINER ACT OF 1928

Standard capacity	Tolerances and variations		Standard capacity	Tolerances and variations	
	Excess	Deficiency		Excess	Deficiency
	Cubic inches	Cubic inches		Cubic inches	Cubic inches
1½ bushels-----	65	33	½ bushel-----	30	15
1¼ bushels-----	58	29	12 quarts-----	23	12
1 bushel-----	50	25	8 quarts-----	16	8
¾ bushel-----	40	20	4 quarts-----	10	5

(c) In case of a container having a capacity to which a standard is applicable which is not specified in the column headed "Standard capacity" in Table 1, the excess or the deficiency allowed shall be that permitted for the next smaller standard capacity specified in the

*For statutory citation, see note to § 41.12.

table, but this shall not apply to containers for which variations and tolerances shall be permitted and established under the Act entitled “An Act to fix the standard barrel for fruits, vegetables, and other dry commodities,” approved March 4, 1915 (38 Stat. 1186; 15 U.S.C. 234–236), when such variations and tolerances become effective.*† [Reg. 5, sec. 2]

41.20 Splint baskets for fruits and vegetables. (a) In the case of splint baskets for fruits and vegetables the following basket and form dimensions and material specifications for each of the several standard sizes, respectively, are hereby standardized for the purpose of the application of tolerances.

SQUARE BRAID AND SLAB OVERHANDLE SPLINT BASKETS—STANDARD BASKET, FORM, AND MATERIAL SPECIFICATIONS

Standard Sizes (cubic inches)	4 qt. 268. 8	8 qt. 537. 6	12 qt. 806. 4	16 qt. 1075. 2	24 qt. 1612. 8	32 qt. 2150. 4
Basket Dimensions	Inches	Inches	Inches	Inches	Inches	Inches
Depth at corners-----	4	5	6	7	8½	8⅝
Top center:						
Width-----	5½	7¼	7¾	8	9	10½
Length-----	13	15½	17¾	19½	22½	22¾
Top corners:						
Width-----	5⅝	7⅞	8	8	9½	11
Length-----	12½	15¼	16¾	18¾	22	22⅞
Bottom:						
Width-----	5⅝	6⅞	7¾	8	9¾	11
Length-----	11⅝	15⅞	16¼	17⅞	19¾	22
Handle: Length-----	16¾	20½	24½	25½	28¾	31¼
Placement of ends-----	Ends of handle shall extend to bottom of basket					
Form Dimensions						
Depth at ends-----	4	5	6	7	8½	8⅝
Top:						
Width-----	6	7	8	8¼	10	11
Length-----	12	15¼	16½	18¼	21¼	21½
Circumference-----	36	45	49	53	59¾	65
Material Specifications Inside Top Bands (when scored)						
Distance between scores:						
Width-----	6	7⅞	8⅞	8¼	-----	11
Length-----	12	15¼	16½	18¼	-----	22⅞
Short and Long Splints (standards)						
Scored from each end-----	4	5	6	7	8½	8⅝
Distance between scores:						
Short-----	5⅞	6⅞	7⅞	8⅞	9¼	11⅞
Long-----	11⅞	15⅞	16⅞	17⅞	19⅞	22⅞
Handle: Length-----	17	20¾	24¾	25¾	28½	31½

*For statutory citation, see note to § 41.12.
†For source citation, see note to § 41.13.

(b) Any splint basket, no dimension of which is in error by more than the tolerance given below for the proper standard size, or, any splint basket which is constructed of standard material and on a standard form no dimension of which, respectively, is in error by more than the tolerance given below for the proper standard size, will be deemed to be not deceptive in appearance and within the tolerance allowed; Provided, That not more than one dimension of any splint basket, splint basket form, or splint basket material, respectively, shall be in error in the same direction.

In the regulations in this subpart an error on a dimension shall be construed as the difference between the actual measured dimension and the standard dimension. An error in excess is to be indicated when the measured dimension is greater than the standard dimension. An error in deficiency is to be indicated when the measured dimension is less than the standard dimension.

TOLERANCES AND VARIATIONS—STANDARD SQUARE BRAIN AND SLAB SPLINT BASKETS—BASKETS, FORMS, AND MATERIAL

Basket Dimensions		Excess or deficiency:
Depth-----	All sizes-----	$\frac{1}{16}$ inch.
Combined width and length:		
Top center-----	4, 8, 32 qt. sizes-----	$\frac{1}{2}$ inch.
Do-----	12, 16, 24 qt. sizes---	$\frac{3}{4}$ inch.
Combined width and length:		
Top corners-----	4, 8, 32 qt. sizes-----	$\frac{1}{2}$ inch.
Do-----	12, 16, 24 qt. sizes---	$\frac{3}{4}$ inch.
Bottom:		
Width-----	All sizes-----	$\frac{1}{8}$ inch.
Length-----	do-----	Do.
Handle:		
Length-----	do-----	$\frac{1}{2}$ inch.
Placement of ends-----	do-----	None.
Form Dimensions		
Depth-----	do-----	$\frac{1}{16}$ inch.
Top:		
Width-----	do-----	$\frac{1}{8}$ inch.
Length-----	do-----	Do.
Circumference-----	do-----	1 inch.
Material Specifications		
Inside top bands (when scored):	do-----	$\frac{1}{16}$ inch.
Scored dimensions.		
Short and long splints (stand-	do-----	Do.
ards): Scored dimensions.		
Handle: Length-----	do-----	$\frac{1}{2}$ inch.

(c) Any splint basket for fruits and vegetables one or more dimensions of which are in error by more than the tolerances given above, or which is constructed of material or on a form one or more dimensions of which, respectively, are in error by more than the tolerances given above, shall be deemed to be outside the tolerance

allowed by this section, and shall be subject to the tests prescribed in § 41.18, and to the tolerances provided for in § 41.19.* [Reg. 5, sec. 3, SRA, BAE 116, as added Dec. 14, 1935]

Subchapter B—Marketing of Perishable Agricultural Produce

PART 46—LICENSING REGULATIONS UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

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DEFINITIONS

Section 46.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.**† [Reg. 1, sec. 1]

**§§ 46.1 to 46.34, inclusive, issued under the authority contained in sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

†The source of §§ 46.1 to 46.34, inclusive, is Rules and regulations for carrying out provisions of Perishable Agricultural Commodities Act, as amended, Secretary of Agriculture, Mar. 1, 1938, 3 F.R. 508.

46.2 Terms in Act defined. The following definitions are included in the Act and shall have the same meaning in the regulations in this part.

(a) **Person.** This term includes individuals, partnerships, corporations, and associations.

(b) Secretary. This term means the Secretary of Agriculture of the United States.

(c) In commerce. This term means interstate or foreign commerce as defined in section 1, paragraphs 3 and 8 of the Act (46 Stat. 531; 7 U.S.C. 499a).

(d) Perishable agricultural commodity. This term means any of the following, whether or not frozen or packed in ice: fresh fruits and fresh vegetables of every kind and character.

(e) Commission merchant. This term means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale on commission or for or on behalf of another.

(f) Dealer. This term means any person engaged in the business of buying and/or selling in carloads any perishable agricultural commodity in interstate or foreign commerce, except that (1) no producer shall be required to obtain a license as a dealer if selling only commodities of his own raising, (2) no person buying in carloads solely for sale at retail shall be considered a dealer until his purchases of such produce in any one calendar year are in excess of 20 carloads, including wholesale or jobbing quantities as defined herein, and (3) no person buying such produce solely for canning and/or processing within the State where grown shall be considered a dealer, unless such produce, after purchase, is frozen or packed in ice. Any producer, retailer, or canner described in exceptions (1), (2), or (3) may elect to secure a license and in such case shall be considered a dealer.

(g) Broker. This term means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, or both.*† [Reg. 1, sec. 2]

46.3 Terms in regulations defined. The following additional definitions shall apply to terms used in this part:

(a) The Perishable Agricultural Commodities Act, 1930, or the Act. This term means an Act of Congress entitled, "An Act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce", approved June 10, 1930, as amended April 13, 1934, June 19, 1936, and August 20, 1937 (46 Stat. 531, 48 Stat. 584, 49 Stat. 1533, 50 Stat. 725; 7 U.S.C. 499a-499r, and Sup.)

(b) Chief of Bureau. This term means the Chief or Acting Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

(c) Licensee. This term means any person who holds an unrevoked and valid unsuspended license issued under the Act.

(d) Branch. This term means any subdivision, whether permanent or seasonal, owned and conducted in the name of a firm licensed under this Act, whose manager or other person responsible for the conduct of the branch has discretionary authority in performing the usual functions of a commission merchant, dealer, or broker.

(e) Inspector. This term shall be deemed to mean any person authorized or licensed by the Secretary to inspect any perishable agricultural commodity.

*†For statutory and source citations, see note to § 46.1.

(f) Produce. This term means any perishable agricultural commodity, as defined in § 46.2 (d).

(g) Fresh fruits and fresh vegetables. This term includes all products generally considered by the trade as perishable fruits and vegetables, whether or not frozen or packed in ice and whether or not held in common or cold storage, but does not include those which have been dried or manufactured into articles of food of a different character.

(h) Wholesale or jobbing quantities. This term as used in section 1, paragraph 6, of the Act (50 Stat. 725; 7 U.S.C., Sup., 499a (6)) means quantities of produce of not less than 1 ton in weight shipped or received by rail, truck, boat, or any other means of transportation.

(i) Truly and correctly to account. This term shall be deemed to include (1) the prompt rendering of a true and correct itemized statement of the sale or other disposition of any consignment of perishable agricultural commodities in commerce with full payment of the gross amount for which such produce is sold, less the proper, usual, or agreed selling charges and all other expenses necessarily and actually incurred or agreed to in the handling thereof; (2) the prompt payment of deficits or other adjustments resulting from the handling of produce on consignment or for or on behalf of another in commerce; (3) the prompt payment of brokerage duly earned in connection with produce in commerce; and (4) the prompt payment of the purchase price or other amount due either the seller or the buyer in accordance with the terms of the agreement between the parties concerned in settlement for produce purchased or sold in commerce.

(j) Account promptly. This term means that full accounting and payment of the net proceeds in cash or its equivalent shall be effected within 10 days after the day on which the final sale shall have been made of any lot of produce sold on commission or otherwise for or on behalf of another, unless otherwise provided by agreement between the parties: Provided, That in the case of a sale on commission at shipping point or of a shipment diverted while in transit or diverted from one terminal market to another, the 10-day period shall be computed from the time of arrival of the shipment at destination. This term also means that the payment of the purchase price or other amount due either the seller or the buyer of produce shall be made in accordance with the terms of the contract of purchase and sale, or, if time of payment is not specified, shall be made within a reasonable time after delivery and acceptance of the produce purchased and sold, and that brokerage charges shall be paid within a reasonable time after having been earned.

(k) Reject. This term shall be deemed to mean the Act of any person who has purchased or offered to handle on consignment or otherwise, for or on behalf of another, produce in commerce, (1) of refusing or failing to accept such produce within a reasonable time, or (2) of advising the seller or shipper or his agent that he will not receive such produce in accordance with his contract or offer, or (3) of

indicating an intention not to accept such produce through an act or failure to act either of which is inconsistent with the contract.

(l) Reasonable time. This term as used in paragraph (k) above shall be deemed to mean with respect to rail shipments not to exceed 24 hours after receipt of notice of arrival of the produce, and with respect to boat shipments not to exceed 24 hours after the produce is unloaded and made accessible for inspection, unless the purchaser applies for Federal inspection of said produce within this period, or unless at the time of the receipt by the purchaser of notice of arrival of the produce the temperature is sufficiently below freezing to render a complete inspection of the produce dangerous thereto, commodity and existing weather considered. In case the temperature is dangerously below freezing at the time of arrival of the produce a preliminary inspection for the sole purpose of determining whether transit freezing injury is present in the load shall be made by the purchaser or caused to be made as soon as possible after the receipt of such notice of arrival, and the further inspection of the produce for the purpose of determining whether the produce meets the requirements of the contract of purchase and sale may be deferred until such time as the temperature and weather conditions will permit such inspection to be safely made, but reasonable time shall not extend beyond the time when such inspection can be safely made. The meaning of the terms "as soon as possible" and "safely made" shall be determined upon a consideration of all the facts and circumstances shown to exist in each case: Provided, That if the receiver has made arrangements to be notified of arrival on Sunday or a legal holiday and if so notified the 24-hour period shall run from 12:01 a. m. to 12 midnight on the next day.

(m) Acceptance. This term shall be deemed to mean that unless the purchaser notifies the seller within a reasonable time as defined in paragraph (l) that he rejects the produce, or unless the purchaser applies for Federal inspection of said produce within a reasonable time (24 hours) and takes action to notify the seller of his rejection of said produce within an hour after he has received either a verbal or a written report of the result of such inspection, or unless, in the case of dangerous freezing temperature as provided in paragraph (l), he shall have notified the seller, within 24 hours after receipt of notice of arrival of the produce, as to the weather conditions which prevent thorough inspection and notified the seller of his rejection immediately after inspection can be safely made following temperature dangerously below freezing, he will be deemed to have accepted the produce, subject to his right to claim damages in case such produce failed to meet the terms of the contract.*† [Reg. 1, sec. 3]

ADMINISTRATION

46.4 Chief of Bureau. The Chief or Acting Chief of Bureau shall perform for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of the Act and of the regulations in this part.*† [Reg. 2, sec. 1]

*†For statutory and source citations, see note to § 46.1.

LICENSES

46.5 License required. (a) No person shall at any time carry on the business of a commission merchant, dealer, or broker without a license issued by the Secretary and countersigned by the Chief of Bureau which is valid and effective at such time.

(b) Any person who maintains one or more branches, as defined in § 46.3, has the option of operating all branches under the license of the parent organization or of taking out a separate license for each branch.*† [Reg. 3, sec. 1]

46.6 Application for license. Any person who desires to secure a license to carry on such business shall make application therefor on a form to be obtained from the Chief of Bureau or his representatives. Applications must be signed by the owner, partner, or, in the case of a corporation, an official duly authorized to do so.*† [Reg. 3, sec. 2]

46.7 License fee. Each application shall be accompanied by the license fee of ten dollars (\$10) in the form of a money order, bank draft, cashier's check, or certified check, made payable to the U. S. Department of Agriculture, and the application and fee shall be forwarded to the Chief of Bureau of Agricultural Economics, U. S. Department of Agriculture, Washington, D. C. Thereafter the annual fee of ten dollars (\$10) required by the Act shall be remitted in the same manner.*† [Reg. 3, sec. 3]

46.8 Copies of licenses. Copies of licenses may be issued on request upon the payment of a fee of \$1 for each copy. Each copy shall contain the word "COPY" in conspicuous letters on its face and be certified by the Chief of Bureau as a true copy of the original.*† [Reg. 3, sec. 4]

46.9 Termination of license; notice. Thirty days or more prior to the anniversary date of a license, the Chief of Bureau shall mail a notice to the licensee at the latest address known to the Chief of Bureau, advising that the license will automatically terminate on its anniversary date unless the annual fee of \$10 is paid on or before said date. A license which has automatically terminated because of failure of the licensee to pay the annual fee may be reinstated within thirty days after its automatic termination upon payment of a fee of \$15.*† [Reg. 3, sec. 5]

46.10 Issuance of license. Upon receipt of an application accompanied by the proper fee for a license, the Secretary will, if the applicant is found to be eligible, issue a license certifying that the licensee is authorized to engage in the business of a commission merchant and/or dealer and/or broker. The fee so tendered, together with any arrearage fees and/or penalty shall be deposited as soon as practicable in a special deposit account, until the license is issued or denied or until the check or other form of remittance is determined to be valid. If the license is denied, the fee shall be returned or refunded, but, if issued, the fee and any arrearages and penalty shall, as soon as practicable, be deposited in or transferred to miscellaneous receipts and will not thereafter be subject to refund. Fees received

for renewal and/or reinstatement of license shall be handled in the same manner as other fees mentioned herein.*† [Reg. 3, sec. 6]

46.11 Nonlicensed person; liability; penalty. Any commission merchant, dealer, or broker engaged in business subject to the Act, without a valid and effective license, will be permitted to settle his liability, if such violation is found not to have been willful, by paying the amount of fees accrued from the date the violation started to the date when application for license and fee is submitted, and a penalty not in excess of \$25 as may be determined by the Chief of Bureau.*† [Reg. 3, sec. 7]

46.12 What constitutes valid license. Each license shall bear a serial number, the signature of the Secretary, the seal of the United States Department of Agriculture, and be countersigned by the Chief of Bureau. The licensee may place upon his stationery, trucks or business sign an inscription that he is licensed under the Act, but such inscription must not be of such form or arrangement as to be deceptive or misleading to the public, nor shall any such inscription be shown unless the person using the same has a license valid at the time.*† [Reg. 3, sec. 8]

46.13 Address or membership changes. The licensee shall advise promptly the Chief of Bureau of any change of address and/or any change in the officers, partners, or ownership, or in the name in which the business is conducted. In case of a change in the ownership of a business, or in the name of a corporation, or in a partnership, such as the death, withdrawal or addition of a partner or partners, or the conduct of a business in a name different from that shown on the license, a new license is required.*† [Reg. 3, sec. 9]

46.14 Arrearage fees. Arrearage fees to be paid by an applicant shall be computed on a basis of $1/12$ of the annual fee of \$10, or eighty-three and one-third cents ($83\frac{1}{3}\text{¢}$), per month or fraction thereof from the time the applicant should have been licensed to the date application and valid fee were submitted for a license.*† [Reg. 3, sec. 10]

ACCOUNTS AND RECORDS

46.15 Accounts and record of licensee. Every commission merchant, dealer, and broker shall preserve for a period of 2 years the accounts, records, and memoranda required by the Act fully and correctly disclosing all transactions involved in his business, including the true ownership of such business by stockholding or otherwise.*† [Reg. 4, sec. 1]

46.16 Inspection of records. Each licensee shall during ordinary business hours permit any duly authorized representative of the United States Department of Agriculture to enter his place of business and inspect any and all such records pertaining to such business as may be necessary to ascertain the facts material to the investigation of any complaint under the Act. Any necessary facilities for such inspection shall be extended to such representative by the licensee, his agents, and employees.*† [Reg. 4, sec. 2]

*†For statutory and source citations, see note to § 46.1.

46.17 No disclosure of business of licensee. No representative of the United States Department of Agriculture shall, without the consent of the licensee, divulge or make known in any manner, except to other representatives of the United States Department of Agriculture who may be required to have such knowledge in the regular course of their official duties, or except insofar as he may be directed by the Secretary, the Chief of Bureau, or by a court of competent jurisdiction, any facts or information regarding the business of such licensee which may come to the knowledge of such representative through an examination or inspection of the business or accounts of the licensee, or unless the same is relevant and material to the issue in any hearing authorized by the Act.*† [Reg. 4, sec. 3]

PROCEDURE AS TO COMPLAINTS, HEARINGS, AND ORDERS

46.18 Procedure in complaints, hearings, investigations, orders, answers. (a) Complaint charging violation of any provision of section 2 or section 9 of the Act (46 Stat. 532, 535, 48 Stat. 585, 49 Stat. 1533, 50 Stat. 725, 726; 7 U.S.C. 499b, 499i, and Sup.) may be filed with the Chief of Bureau by any interested person, including any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture. If such complaint is to be made the basis of a claim for damages, the complaint must be filed within 9 months after the cause of action accrues. The same facts may also be made the basis of a disciplinary complaint against a licensee complained of at any time within 2 years after the violation of the law occurred: Provided, however, That the 2-year limitation herein prescribed shall not apply to flagrant or repeated violations of the Act.

(b) Complaints under the Act may be filed informally by telegraph, by letter, or by a preliminary statement of facts setting forth the essential details of the transaction complained of. So far as practicable every such complaint should state:

- (1) The name and address of each party and of his agent, if any, representing him in the transaction involved;
- (2) Kind of produce shipped;
- (3) Date of shipment;
- (4) Car initial and number, if carlot;
- (5) Shipping and destination points;
- (6) Quantity shipped;
- (7) Quality or grade of each kind of produce;
- (8) If a sale, state: Sale price; amount actually received;
- (9) If a consignment, state: Reported proceeds; gross; net; date;
- (10) Amount of damages claimed;
- (11) Statement of material facts, including terms of contract.

(c) The complaint must be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspec-

tion certificates, accounts sales, and any special contracts or agreements.

(d) In complaints involving damages in connection with the sale or purchase of produce, the complainant will be required to furnish information tending to show the existence of a contract.

(e) Upon receipt of all of the information and supporting evidence submitted by the complainant, the Chief of Bureau shall make such investigation as in his opinion is justified by the facts. If such investigation discloses that no violation of the Act has occurred, the matter will be dropped and the complainant so advised.

(f) If the statements in the informal complaint seem to warrant such action, the Chief of Bureau shall call upon the party complained against to state his side of the controversy in an effort to effect an amicable adjustment of the claim. Should such adjustment not be made and the information secured by correspondence or investigation indicate the probability of a violation of the Act, further proceedings will be based upon formal complaint, either for damages filed by the aggrieved party or for disciplinary action filed by any person authorized in section 6 (b) of the Act (50 Stat. 728; 7 U.S.C., Sup., 499f (b)). In the latter case, the Chief of Bureau may proceed with the handling of the complaint without further action by the person originally filing the complaint, except as he may be subpoenaed as a witness in the case of his deposition taken without expense to him.

(g) Formal disciplinary complaints, that is, complaints which do not involve claims for damages, shall be filed in such form as may be prescribed by the Chief of Bureau and shall set forth the grounds for alleging a violation of the Act.

(h) If the procedure provided in paragraph (f) of this section fails to effect an amicable adjustment and indicates the probability of a violation of the Act, the complainant shall be required to submit a formal complaint to the Chief of Bureau setting forth the information and accompanied by the papers indicated in paragraphs (b) and (c) of this section, and stating the amount of damages claimed, with the basis therefor and the method of determination. Three additional copies shall be furnished for filing and service on the respondent. If there is more than one respondent, a further copy shall be furnished for each of the additional respondents.

(i) If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or in double the amount of the claim with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fees for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary against the complainant or any counterclaim by respondent, Provided, That the furnishing of a bond shall be waived

if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

(j) If the formal complaint, either disciplinary or involving claim for damages, appears to be in proper form, it shall be transmitted by the Chief of Bureau, together with the Bureau's entire file relating to the case, to the Solicitor of the Department, who, if he determines that the complaint is in proper form, shall serve a copy thereof upon the party complained against, who shall be referred to as the respondent.

(k) In making service of the complaint, respondent will be called upon to file an answer thereto, in triplicate, within 10 days from date of such service.*† [Reg. 5, sec. 1]

46.19 Hearings. (a) Upon failure or refusal of the respondent to explain satisfactorily in writing or to make such reparation as is satisfactory to the complainant, the Solicitor of the Department may order a public hearing upon the matter before an examiner for the Department, and due notice of such public hearing shall be given by the Solicitor to the person concerned, which hearing shall be held in any place in which the party complained of is in business.

(b) In such a public hearing, the complainant and the respondent may appear personally or by counsel. In such proceedings, the burden of proof is upon the complainant. Representatives of the Department who may have knowledge of any fact in the case, and any other persons having information, accounts, records, or memoranda relating to the subject of the complaint, may be subpoenaed to testify or furnish evidence at such hearing by deposition.

(c) In a hearing on any complaint, the Secretary or any officer or employee designated by him may sign and issue subpoenas, administer oaths, examine witnesses, take depositions, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under the Act.

(d) Amendment of any pleading will be allowed by the Solicitor of the Department prior to the hearing or by the examiner at the hearing if such amendment is not prejudicial to the other party and is deemed proper by the solicitor or such examiner; otherwise it will be refused.

(e) Where the amount of damages claimed does not exceed \$500, a hearing need not be held unless deemed necessary or desirable by the Chief of Bureau or the Solicitor, or granted upon application of complainant or respondent setting forth the peculiar circumstances making such hearing necessary for a proper presentation of the case. Proof in support of the complaint and the answer may be supplied in the form of depositions or verified statements of fact. Complainant's opening statement of facts should be mailed to the Solicitor within fifteen days following receipt of the Solicitor's notice that the case is to be submitted without a formal hearing. Respondent will have fifteen days from receipt of complainant's opening statement in

which to mail an answering statement of fact, and complainant will then have five days from receipt of respondent's answering statement in which to mail a reply thereto. All such statements must be furnished in triplicate. Application for the furnishing of proof in deposition form must be promptly made and the information furnished as required by § 46.20. Either party failing to furnish proof in the manner and within the time above specified, unless such time has been extended, will be deemed to have waived the furnishing thereof, and the disputed issues of fact and law may, subject to paragraph (h) of this section, be considered and decided upon the pleadings and attached exhibits, together with such proof as the opposing party may furnish.

(f) Where the amount of damages claimed in a complaint is greater than \$500 but does not exceed the sum of \$2,000, both parties may, by the filing of a waiver of hearing, consent to the submission of the case to the Secretary upon sworn statements of fact, depositions, supporting exhibits, and other records comprising the file in the case made by the Bureau in connection with its preliminary investigation of the complaint in lieu of a record made at a public hearing provided for in paragraphs (a)–(c). If the respondent, after notice of his right to apply for or waive a formal hearing, fails to indicate within the time provided therefor in such notice whether he desires to apply for or to waive such hearing, the case may proceed as though he had filed a waiver. Where such waiver is filed, complainant may, within 15 days after receipt of notice that both parties have waived hearing, file with the Department an original and two copies of its verified statement of facts in support of the allegations of the complaint, and an additional copy for each respondent in excess of one. The Department will make service thereof upon respondent, who will then have 15 days within which to file, in like manner, an original and two copies of its answering statement of facts. Complainant will then have 5 days within which to file a reply to respondent's answering statement. If either party feels that his explanation already made is sufficient and desires to waive the making of a further statement, he shall promptly so advise the Department. Upon full submission of the case, as herein provided, the Secretary will then consider such records and enter findings of facts and make an appropriate order in the same manner and which shall have the same force and effect as if entered upon a record made at a public hearing.

(g) When a complaint has been regularly served upon the respondent therein named and such respondent thereafter fails or refuses to file an answer thereto within the allotted time, the verified complaint and attached exhibits, if any, may, subject to paragraph (h) of this section, be accepted both as a pleading and as proof.

(h) In any case, the Chief of Bureau or the Solicitor may call for the submission of additional evidence or further investigation of the facts at any time prior to decision by the Secretary if such additional information is deemed necessary to a fair determination of the matter.

(i) Any fact developed as a result of an investigation, either in person or by correspondence, under the authority of the Chief of Bureau shall be considered by the Secretary as part of the evidence: Provided, That a copy of the investigator's report and of all evidence secured by correspondence shall have been submitted to both parties. Any rebuttal evidence submitted by either party shall be (1) by verified statement of facts, if within the knowledge of the party to the proceeding who submits the statement, or (2) by deposition, if within the knowledge of some one else, all of which shall also be considered by the Secretary.*† [Reg. 5, sec. 2]

46.20 Depositions. (a) The testimony of any witness who is or will be unable to appear in person at a hearing may be taken in deposition form. Either party, complainant or respondent, may apply to the Department in writing for an appropriate order, in which application the case should be identified by the names of the parties and docket number and give:

- (1) The name of each witness whose deposition is to be taken;
- (2) The name and address of a notary public or other person who is authorized to administer oaths before whom such witness or witnesses may testify;
- (3) An accurate description of the place where such deposition or depositions will be taken, such as street, office building, and room therein.

(b) Such witness or witnesses and the notary public or other person designated to take a deposition, unless he be an employee of the Department, shall severally be entitled to the fees authorized by section 13 (e) of the Act (46 Stat. 536; 7 U.S.C. 499m (e)), which fees shall be paid by the party at whose instance the deposition was taken.*† [Reg. 5, sec. 3]

46.21 Final orders of Secretary. (a) If, after hearing has been held or waived in complaints where the damages claimed exceed \$500 and on complaints where damages do not exceed \$500 not requiring hearings as provided by section 6 (c) of the Act (48 Stat. 587; 7 U.S.C. 499f (c)), the Secretary determines that the respondent has violated any provisions of section 2 of the Act (46 Stat. 532, 48 Stat. 585, 49 Stat. 1533, 50 Stat. 725, 726; 7 U.S.C. 499f and Sup.) he will, unless reparation has already been made to complainant, determine the amount of damage, if any, to which the complainant is entitled as the result of such violation and will make an order directing respondent to pay to complainant such amount on or before the date fixed in the order. He will also issue such disciplinary order as the facts warrant.

(b) Any order of the Secretary other than for the payment of money shall be effective not less than 10 days from and after the date the order is signed.

(c) Any order for reparation shall state the period which shall be allowed for the payment of such reparation.

(d) If either party appeals from a reparation order entered by the Secretary without formal hearing as provided in section 6 (d) of the Act (48 Stat. 587; 7 U.S.C. 499f (d)), the suit shall be filed

in the District Court of the United States for the district in which the respondent is located.*† [Reg. 5, sec. 4]

46.22 Petitions for rehearing. (a) Application for further hearing in a proceeding before final submission must be by petition within 30 days from the date of hearing or for reopening a proceeding after final submission must be by petition within 30 days from the date of such final submission. Such petition shall state specifically the grounds relied upon and the petitioner must show that service of a copy thereof has been made upon the adverse party. Such adverse party may have 20 days in which to file objections with the Chief of Bureau and to serve a copy thereof on the petitioner.

(b) If the application be for further hearing before final submission or for reopening a proceeding to take further evidence, the nature and purpose of the evidence to be adduced must be briefly stated and it must appear not to be merely cumulative.

(c) After an order has been issued the Secretary will consider an application for the reconsideration of such order when a written petition for such proceeding is filed with the Chief of Bureau within 15 days after such order has been served upon petitioner, provided such petition sets forth, (1) some fact or facts which disclose that the damages awarded are excessive or inadequate, or (2) the discovery of material evidence, together with a statement thereof, which was not available to petitioner prior to the hearing, or (3) the statement of some fact or facts which prima facie show that the proceedings did not conform to the requirements of the law.*† [Reg. 5, sec. 5]

SUSPENSION AND REVOCATION OF LICENSES

46.23 When licenses revoked or suspended. Whenever the Secretary determines, as provided in section 6 of the Act (48 Stat. 587; 7 U.S.C. 499f (d)), (a) that any commission merchant, dealer, or broker has violated any of the provisions of section 2 (46 Stat. 532, 48 Stat. 585, 49 Stat. 1533, 50 Stat. 725, 726; 7 U.S.C. 499b and Sup.), or (b) that any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14 (b) of this Act (50 Stat. 731; 7 U.S.C., Sup., 499n (b)), the Secretary may publish the facts and circumstances of such violation and/or suspend the license of such offender for a period not to exceed 90 days, except that, if the violation is a flagrant or repeated violation of such provisions, or if it be found that the licensee has committed one of the offenses set forth in section 8 (b) or (c) of the Act (50 Stat. 730; 7 U.S.C., Sup., 499h), the Secretary may revoke the license of the offender.*† [Reg. 6, sec. 1]

46.24 Suspension for lack of records. Whenever the Secretary determines that a licensee has failed or refused to keep such records as are prescribed in section 9 of the Act (46 Stat. 535; 7 U.S.C. 499i), the facts and circumstances may be published and the license of the offender suspended for a period not to exceed 90 days by order of the Secretary.*† [Reg. 6, sec. 2]

46.25 Suspension for refusal of records inspection. Upon the failure or refusal of any licensee to permit the inspection of accounts,

*†For statutory and source citations, see note to § 46.1.

records, and memoranda material to a complaint, the facts and circumstances incident thereto may be published and the license of the offender suspended until such permission is given.*† [Reg. 6, sec. 3]

46.26 Suspension for noncompliance. Upon failure of a licensee against whom a reparation order has been issued to show to the satisfaction of the Chief of Bureau within 5 days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as authorized by section 7 (c) of the Act (50 Stat. 729; 7 U.S.C., Sup., 499g (c)) or has made payment in full or has filed a petition for rehearing or reargument as provided in § 46.22, the Chief of Bureau shall notify the licensee that his license is suspended automatically at the end of the 5-day period until such time as he has shown to the satisfaction of the Chief of Bureau that he has paid the amount specified with interest.*† [Reg. 6, sec. 4]

46.27 Publication of order of suspension or revocation. Immediately upon the issuance of an order of suspension or revocation the Chief of Bureau will cause general publicity to be given to the action in order that those doing business with the person whose license shall have been suspended or revoked may take due notice thereof.*† [Reg. 6, sec. 5]

46.28 Suspension or revocation order. (a) Whenever the Secretary shall order the suspension or revocation of a license, the person against whom such order is directed shall be served by the Chief of Bureau with a copy of the order and be notified of the effective date thereof.

(b) Except in the case of any license automatically suspended by the Act, a reasonable time, not less than 10 days between the date of issuance and the date upon which the order of suspension or revocation becomes effective, shall be stated in the order within which the licensee may make all necessary arrangements with some other person, whose license shall not have been either suspended or revoked, to safeguard the interests of consignors or other innocent parties whose property or business may be affected by such suspension or revocation and to terminate the affairs and business of such licensee relating to the handling of perishable agricultural commodities in commerce.

(c) After the revocation of his license or during the effective period of any suspension thereof the licensee shall not either directly or indirectly through any agent, employee or otherwise, carry on the business of a commission merchant, broker, or dealer until his status as a licensee has been restored.

(d) The suspension or revocation of a license shall not prevent the licensee from collecting amounts due on his contracts or in connection with transactions in which he acted as an agent and remitting the same promptly to his principals and obligees.*† [Reg. 6, sec. 6]

SERVICE OF COMPLAINTS OR ORDERS

46.29 Sufficient service. Service of any complaint or order required by the Act or prescribed by the regulations in this part shall

be deemed sufficient if made by registered mail or personally upon the licensee or upon his attorney. Service so made upon any member of a partnership or any officer of an association or corporation shall be sufficient. Personal service includes leaving notice at the last address furnished the Chief of Bureau in compliance with the regulations in this part or at the last and usual place of abode of any member of a partnership or officer of an association or corporation.*† [Reg. 7, sec. 1]

TRADE TERMS AND DEFINITIONS

46.30 Terms construed. Unless otherwise defined, the following terms when included in a contract or communication involved in any investigation made or hearing held pursuant to this Act shall be construed, respectively, to mean:

(a) The term "Today's shipment", or shipment on a specified date (such as shipment September 12), shall mean that the goods referred to shall be under billing by the transportation company the day the order is given or on the date specified in time to be picked up by a train scheduled to move that day's loadings from the shipping point provided that such train shall leave the first pick-up point on its schedule before midnight of the day the order is given.

(b) The term "Tomorrow's shipment" or "Immediate shipment" shall be deemed to mean that the shipment referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 24 hours later than allowed under "Today's shipment."

(c) The term "Quick shipment" shall be deemed to mean that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 48 hours later than that allowed under "Today's shipment."

(d) The term "Prompt shipment" shall be deemed to mean that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 72 hours later than allowed under "Today's shipment."

(e) The term "Shipment first part of week" or "Early part of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Monday or Tuesday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

(f) The term "Shipment middle of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Wednesday or Thursday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

(g) The term "Last of week" or "Latter part of week" shall be deemed to mean that the produce referred to shall be under billing

*†For statutory and source citations, see note to § 46.1.

by the transportation company in time to move on a transportation facility scheduled to leave on Friday or Saturday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

(h) The provisions "Shipment as soon as possible" or "As soon as cars can be secured" shall be deemed to mean that the shipper is uncertain as to when the shipment can be made but expects to make it within a reasonable time and will make it as soon as possible. But in any case where these words are so used the buyer shall, at any time after 12 days from the date the order is given, have the right to cancel the order or contract of sale provided notice of his decision so to cancel shall have been received by the shipper before shipment has been made.

(i) The term "f. o. b." (for example, "f. o. b. Laredo, Tex.", or even "f. o. b. California") shall be deemed to mean that the commodity quoted or sold is to be placed free on board the car or other agency of through land transportation at shipping point, in suitable shipping condition (see definitions of "suitable shipping condition", paragraphs (j) and (k) of this section) and that the buyer assumed all risks of damage and delay in transit not caused by the shipper, irrespective of how the shipment is billed. The buyer has the right if inspection at destination before the goods are paid for, but only for the purpose of determining that the produce shipped complied with the terms of the contract or order at time of shipment subject to the provision covering suitable shipping condition. This right of inspection does not convey or imply any right of rejection by the buyer because of any loss, damage, deterioration, or change which has occurred in transit.

(j) "Suitable shipping condition" in relation to direct shipments shall be deemed to mean that the commodity, at time of billing, shall be in a condition which, when shipment is handled under normal transportation service and conditions, will assure delivery without abnormal deterioration at the destination specified in contract of sale.

(k) "Suitable shipping condition" in connection with reconsigned or rolling cars shall be deemed to mean that the commodity, at time of sale, shall meet the requirements of the definition of this phrase provided for application to direct shipments in paragraph (j) of this section.

(l) The term "f. o. b. acceptance" shall be deemed to mean the same as f. o. b. except that the buyer assumes full responsibility for the goods at shipping point and has no right of rejection on arrival, nor has he any recourse against the shipper because of any change in condition of the goods in transit, unless the goods when shipped were not in suitable shipping condition. (See definitions, paragraphs (j), (k) of this section.) The buyers' remedy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment.

(m) The term "f. o. b. acceptance final" shall be deemed to mean that the buyer accepts the commodity f. o. b. cars at shipping point without recourse.

(n) The term "f. o. b. steamer" shall be deemed to mean that the commodity bought or sold is to be placed free on board the steamer at shipping point in accordance with the terms of the contract and that the buyer assumes all responsibility and risk of damage thereafter.

(o) The term "f. a. s. steamer" shall be deemed to mean that the commodity bought or sold is to be delivered free alongside the steamer in accordance with the terms of the contract and that the buyer assumes all responsibility and risk of damage thereafter.

(p) The term "Delivered" or "Delivered sale" shall be deemed to mean that the commodity quoted or sold is to be delivered by the seller on board car, or on dock if delivered by boat, at the market in which the buyer is located, or at such other market as agreed upon, free of any and all charges for transportation or protective service. The seller assumes all risks of loss and damage in transit not caused by the buyer. For example, a sale of "U. S. No. 1 potatoes delivered Chicago" means that the potatoes when tendered for delivery at Chicago shall meet all the requirements of the U. S. No. 1 grade as to quality and condition.

(q) The term "In transit", "Roller", or "Rolling car" shall be deemed to mean that the commodity referred to is in possession of the transportation company and under movement from shipping point when the quotation is made, and that the car is moving over a route in line of haul between the point of origin and the market in which delivery is to be made, and has been so moving since date of shipment without any delay attributable to the shipper or his agent. If a roller, or rolling car, or car in transit is sold f. o. b. shipping point, the buyer will be deemed to assume only the lowest authorized all-rail freight charges applicable between the point of origin and the destination stated in the contract of purchase, together with car rental and refrigeration and heater charges, if any; Provided That the kind and extent of the protective service required by the shipper's instructions to the carriers are specified in the contract. But the buyer shall not be deemed to have assumed any demurrage, storage, detention, icing, or heater charges, or diversion or reconsignment charges, that would not have accrued had the car been originally shipped direct to the destination named in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification has been duly acknowledged by the carrier, the contract of sale shall be deemed to have become null and void unless otherwise specifically provided.

(r) The term "Tramp car" or "Tramp car sale" shall mean that the commodity has left the shipping point under a bill of lading issued prior to the day on which the quotation is made and has moved or is moving over a route out of line of haul with the market in which it is to be delivered or in which it is being offered or quoted, or which has been moving over a route in line of haul between the point of origin and the market in which it is to be delivered or in which it is being offered or quoted, but has been delayed in transit by the shipper, or has been held by the transportation company at diversion or other points en route awaiting instructions from the shipper and by such holding or delay has missed scheduled movement between points of

shipment and the market in which it is to be delivered as the result of the transaction in question. But if sold f. o. b. shipping point, the buyer assumes only the lowest authorized all-rail freight charges applicable between the point of origin and the destination stated in the contract of purchase, together with the car rental and refrigeration and heater charges, if any; Provided, That the kind and extent of the protective service required by shipper's instructions to the carriers are specified in the contract. But the buyer shall not assume any demurrage, storage, detention, icing, or heater charges, or diversion or reconsignment charges, that would not have accrued had the car been originally shipped direct to the destination provided in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification has been duly acknowledged by the carrier, the contract of sale shall be deemed to have become null and void unless otherwise specifically provided. -

(s) The term "Rolling acceptance" shall be deemed to mean that the buyer accepts at time of purchase a commodity which is in the possession of the transportation company and under movement from shipping point, under the terms and conditions described in paragraphs (q), (r) of this section except that the buyer assumes full responsibility for transportation of the goods from time of purchase, has no recourse against the seller because of any change in condition after time of purchase unless the goods when shipped were not in suitable shipping condition, and has no right of rejection on arrival. The buyer's remedy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment. By agreement between the parties, however, the purchase may be made subject to inspection at any specified point while the car is rolling or in transit and the point at which the buyer will assume transportation charges may be specified without affecting the time of acceptance of the commodity.

(t) The words or term "Track sale" or "Sale on track" shall be deemed to mean that when a commodity is sold on track after arrival at destination, the buyer shall be considered to have waived any right to reject the commodity so purchased upon receipt by him or his duly authorized representative, from the seller or his duly authorized representative, of the bill of lading, delivery order, or other document enabling him to obtain the goods from the carrier.

The foregoing shall not be construed as depriving the buyer of a right to reparation when the unloading of the car shall demonstrate that a part of the lading which was not accessible to inspection was of a quality or condition much inferior to that portion which was accessible to inspection; but notice of intention to file claim for reparation must be given seller within 24 hours after receipt by buyer of delivery order or bill of lading.

If the seller gives the date of arrival when quoting price, the buyer shall assume all charges that accrue on the shipment from the date of its arrival in the absence of any written memorandum of sale to the contrary. If the seller fails to furnish the date of arrival when quoting price, in the absence of any written memorandum of sale

which includes the date of arrival or specific written statement as to who shall assume such charges as have accrued after arrival, the buyer may assume that the shipment arrived at point of sale on the day and date upon which the purchase was made, and shall be liable only for such charges as would properly attach to a shipment arriving on date it was purchased.

(u) The abbreviations "c. a. f.", "c. a. c.", and "c. i. f." shall be deemed to mean "cost and freight," "cost and charges," and "cost, insurance and freight," respectively. When a sale is made c. a. f. it shall be deemed to mean the same as an f. o. b. sale except that the selling price includes the correct freight charges to destination. C. a. c. sales shall be deemed to be the same as f. o. b. sales except that the selling price includes the correct freight and refrigeration or heater charges to destination. C. i. f. sales shall be deemed to be the same as f. o. b. sales except that the selling price includes insurance and the correct freight, refrigeration, or heater charges to destination.

(v) A "carload" or "carlot" or "car" when referred to in offers, quotations, or sales in which the quantity is not more definitely specified, and in the absence of well-established trade custom or standard as to size of a "carload" of the commodity in question, shall be deemed to mean not less than the lowest minimum quantity required by the carrier's tariff applicable to the movement, and not more than 10 percent in excess of such lowest minimum tariff requirements, except that where carrier's tariffs provide alternative rates and minima, the buyer shall state which tariff minimum must be observed, and in event of failure so to do, the shipper may exercise his discretion, in no case, however, exceeding the higher tariff minimum quantity, except only such variations therefrom as are permitted in this paragraph.

(w) The term "Shipping-point inspection" shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality and/or condition specifications of the contract and that the seller assumes the risk incident to incorrect certification.

(x) The term "Shipping-point inspection final" or the words "Inspection final" following the name of the State or point as "California inspection final", shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality and/or condition specifications of the contract and that the buyer assumes the risk incident to incorrect certification and is without recourse as to quality and condition.

(y) The term "Subject approval wired Government inspection" shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, and to correctly communicate, by wire or other agreed means, the statements on the certificate as to quality, condition and grade, and other essential information, whereupon the

purchaser upon approval thereof will be deemed to have accepted the commodity without recourse as to quality and condition.

(z) The term "Guaranteed advance," as used in connection with an advance payment on consigned produce, shall be deemed to mean that the party making the advance guarantees that the net proceeds to the consignor shall at least equal the amount so advanced, and in any case where a guaranteed advance is made the consignor cannot be held liable for any deficit resulting from the sale of the produce, if such deficit is not occasioned by or contributed to by some act or acts of the consignor.

(aa) The term "Accommodation advance", or "Regular advance", as used in connection with an advance of money or credit against anticipated net proceeds to be realized from the sale of consigned produce, shall be deemed to mean that the shipper has received an advance of money or credit and if the consigned produce does not sell for enough to cover the cost of transportation and handling, including customary or agreed commission and the advance made to him, the shipper must return to the one making the advance a sum equal to the deficit sustained.

(bb) The term "Price arrival", in the absence of a contrary specific understanding, shall be deemed to mean that the produce is shipped either direct to the customer or to an agent of the shipper, for the benefit of the customer, the price to be subject to agreement between the customer and the shipper upon the arrival of the goods at the customer's destination and with sufficient time being permitted for inspection.

(cc) The term "f. o. b. inspection and acceptance arrival" shall be deemed to mean that the commodity quoted or sold is to be placed by the seller free on board car or other agency of through transportation at shipping point, the cost of transportation to be borne by the buyer, but the seller to assume all risks of loss and damage in transit not caused by the buyer who has the right to inspect the goods upon arrival and to reject them if upon such inspection they are found not to meet the specifications of the contract of sale at destination. The buyer may not reject without reasonable cause. Such a sale is f. o. b. only as to price and is on a delivered basis as to quality and condition.

(dd) The term "f. o. b. sale at delivered price" shall be deemed to mean the same as f. o. b. except that transportation charges from shipping point to destination shall be borne by the seller, that is, the sale is f o. b. as to quality and delivered as to price.*† [Reg. 8, sec. 1]

SUNDAYS AND HOLIDAYS

46.31 Sundays and holidays excluded. Sundays and legal holidays shall not be included in the computation of the 5-day period provided in section 7 (d) of the Act (50 Stat. 729; 7 U.S.C., Sup., 499 g (d)), nor in connection with the periods defined in § 46.3 (k), (l), and (m) (except if the notice of arrival of the produce is received by the purchaser on Sunday or a legal holiday, the 24-hour period shall begin to run at 12:01 a. m. the succeeding day) and § 46.30 except paragraph (a) of said section.*† [Reg. 9, sec. 1]

46.32 Sundays and holidays included. Sundays and legal holidays shall be included in the computation of time in all other periods mentioned in the Act or in the regulations in this part.*† [Reg. 9, sec. 2]

INSPECTION SERVICE

46.33 Inspection service. The rules and regulations of the Secretary governing the inspection and certification of fruits and vegetables as outlined in Part 51 and amendments thereto, and such additional amendments as may from time to time be promulgated, insofar as they apply to fresh fruits and fresh vegetables, shall govern the inspection of these products under this Act and are hereby made a part of the regulations in this part.*† [Reg. 10, sec. 1]

COPIES OF RECORDS

46.34 Copies of records; how obtained. Copies of the application and other records pertaining to licensees under this Act may be furnished under the conditions prescribed in the regulations of the Department of Agriculture, and, except where requested by Government officials, upon the payment of the following fees, which shall be deposited in the Treasury of the United States as miscellaneous receipts:

- (a) For each typewritten copy, 15 cents per page.
- (b) For each photographic or photostatic copy, 25 cents per page.
- (c) For each separate authentication, 25 cents.*† [Reg. 11, sec. 1]

PART 47—REGULATIONS RESTRICTING DUMPING BY FARM PRODUCE AGENCIES

Sec.	Sec.
Definitions	47.6 Failure to account is violation of Act.
47.1 Meaning of words.	Certificates of inspection
47.2 Terms defined.	47.7 Certificates; when issued.
Administration	47.8 Certificate; contents.
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Violations	47.10 Copy of certificate to Chief of Bureau.
47.4 Violation of Act; what constitutes.	Complaints
47.5 False report or statement is violation of Act.	47.11 Filing of complaints.

DEFINITIONS

Section 47.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.**†† [Reg. 1, sec. 1]

**§§ 47.1 to 47.11, inclusive, issued under the authority contained in sec. 3, 44 Stat. 1355; 7 U.S.C. 494.

††The source of §§ 47.1 to 47.11, inclusive, (except for the amendments noted in the text,) is Rules and regulations of the Secretary of Agriculture for the enforcement of the Produce Agency Act, June, 1927. (SRA, BAE 107)

*†For statutory and source citations, see note to § 46.1.

47.2 Terms defined. For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) **The Produce Agency Act, or the Act.** An Act of Congress entitled "An Act to prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others, and to require them truly and correctly to account for all farm produce received by them," approved March 3, 1927 (44 Stat. 1355; 7 U.S.C. 491-497).

(b) **Person.** Individual, firm, association, or corporation.

(c) **Secretary.** The Secretary of Agriculture of the United States.

(d) **Chief of Bureau.** The Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

(e) **Produce.** The term "produce" as used in the Act means fruits, vegetables, melons, dairy or poultry products, or any perishable farm products of any kind or character.

(f) **Good and sufficient cause.** This term with respect to destroyed, abandoned, discarded, or dumped produce, shall be deemed to mean that the produce so dealt with had no commercial value, or that some other legal justification for so dealing with such produce existed, such as an order of condemnation by a health officer or definite authority from the shipper.

(g) **The account therefor.** This term, as used in the Act, shall be deemed to mean that the consignee of produce shall, within a reasonable time after it has been disposed of, render to the consignor a true and correct statement of the gross sales, charges, net proceeds, and the disposition of any produce not sold, and shall make full payment of the net proceeds to the consignor: Provided, however, That the consignor and consignee may in writing agree upon a date or time for the submission of the account sale and the making of payment.* [Reg. 1, sec. 2, SRA, BAE 107, May 17, 1927, as amended Oct. 2, 1929]

ADMINISTRATION

47.3 Chief of Bureau. The Chief of Bureau shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of this Act and the rules and regulations in this part.*† [Reg. 2, sec. 1]

VIOLATIONS

47.4 Violation of Act; what constitutes. Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another who, without good and sufficient cause therefor, shall destroy or abandon, discard as refuse, or dump any produce, directly or indirectly or through collusion with any person, shall be considered to have violated the Act.*† [Reg. 3, sec. 1]

47.5 False report or statement is violation of Act. Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another shall be considered to have violated the Act if knowingly and with intent to defraud he makes any false

report or statement to the person from whom such produce was received concerning the handling, condition, quality, quantity, sale, or disposition thereof.*† [Reg. 3, sec. 2]

47.6 Failure to account is violation of Act. Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another shall be considered to have violated the act if knowingly and with intent to defraud he fails truly and correctly to account to the person from whom such produce was received for the actual price received for that specific produce, and the actual expenses incurred and charges made incident to the handling and disposition of the same, unless a different basis of settlement is agreed upon between them.*† [Reg. 3, sec. 3]

CERTIFICATES OF INSPECTION

47.7 Certificates; when issued. (a) The following classes of persons are hereby designated to make investigations regarding the quality and condition of produce received in interstate commerce or in the District of Columbia, and to issue certificates as to the quality and condition of such produce which is to be destroyed, abandoned, discarded as refuse, or dumped, upon application of any person shipping, receiving or financially interested in such produce:

(1) Any authorized inspector of the United States Department of Agriculture under the farm products inspection law (7 U.S.C. 414 and Sup.).

(2) Any health officer or food inspector of any State, county, parish, city, or municipality.

(3) Any two disinterested persons engaged at the time of the investigation, and for a period of at least one year next prior thereto, in the handling of the same general kind or class of produce as that to be inspected, and having no financial interest therein or in the business of any person financially interested therein, and unrelated by blood or marriage to such person. Any certificate issued by two disinterested persons under this section must include a statement that they possess the above qualifications.

(b) Investigation and certification as to the quality and condition of produce shall be made by two disinterested parties only when inspectors of the classes designated (1) and (2) are not available.* [Reg. 4, sec. 1, SRA, BAE 107, May 17, 1927, as amended Oct. 2, 1929]

47.8 Certificate; contents. Any certificate under the Act must identify the particular lot of produce inspected, give the date upon which the inspection was made, the approximate quantity of the produce, the name and address of the agent handling the same, the fee, if any, charged therefor, and shall state the quality and condition of such produce and that it was without commercial value at the time of the inspection.*† [Reg. 4, sec. 2]

47.9 Application for inspection; how made; contents. Application for an inspection under the Act must be made or confirmed in writing to the person requested to make such inspection. The application must show the name and address of the shipper, the name and

*†For statutory and source citations, see note to § 47.1.

address of the applicant, the location and description of the produce, with marks, brands, or other specific identification if practicable.*† [Reg. 4, sec. 3]

47.10 Copy of certificate to Chief of Bureau. Any person issuing a certificate under the rules and regulations in this part must mail a copy of the certificate promptly to the Chief of Bureau.*† [Reg. 4, sec. 4]

COMPLAINTS

47.11 Filing of complaints. Any person having reason to believe that the Act has been violated should submit all available facts with respect thereto to the Chief of Bureau for investigation and appropriate action.*† [Reg. 5, sec. 1]

Subchapter C—Regulations Under the Farm Products Inspection Act

PART 51—FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION AND CERTIFICATION)

Sec.		Sec.	
	Definitions		Appeal inspection
51.1	Meaning of words.	51.22	When appeal may be taken.
51.2	Terms defined.	51.23	How to obtain.
	Administration	51.24	Record of filing time.
51.3	Chief of Bureau.	51.25	When appeal may be refused.
	Where service is offered	51.26	When appeal may be withdrawn.
51.4	Inspection; where made.	51.27	When a second inspection is not an appeal.
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51.5	Kind of service.	51.29	Who shall pass upon appeals.
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51.9	When application deemed filed.	51.32	Who may be licensed as inspectors.
51.10	When application may be rejected.	51.33	Suspension of licenses.
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51.12	Authority of agent.	51.34	Fees and expenses.
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51.15	Order of inspection.	51.37	Refunds.
51.16	Financial interest of inspector.		Miscellaneous
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51.18	Certificate; form.	51.39	Publication.
51.19	Certificates; issuance.	51.40	Political activity.
51.20	Certificates; disposition.	51.41	Identification.
51.21	Advance information.		

DEFINITIONS

Section 51.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.**†† [Reg. 1, sec. 1]

**§§ 51.1 to 51.41, inclusive, issued under the authority contained in 49 Stat. 1450; 7 U.S.C., Sup., 414.

††The source of §§ 51.1 to 51.41, inclusive, is Rules and regulations of the Secretary of Agriculture governing the inspection and certification of fruits, vegetables, and other products, Aug. 1936, 1 F.R. 654. (SRA, BAE 93, 2d rev.)

51.2 Terms defined. For the purpose of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **Act.** The following provision of an Act of Congress entitled “An Act making appropriations for the Department of Agriculture * * * for the fiscal year ending June 30, 1936, and for other purposes,” approved May 17, 1935 (49 Stat. 247; 7 U.S.C., Sup., 414) or any future act of Congress conferring like authority:

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and condition of cotton, cottonseed, tobacco, fruits and vegetables, whether raw, dried or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) **Secretary.** Secretary or Acting Secretary of Agriculture of the United States.

(c) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(d) **Person.** Individual, partnership, corporation, or association.

(e) **Inspector.** An employee of the Department of Agriculture or other person authorized by the Secretary to investigate and certify to shippers and other interested parties the quality and condition of products under the Act.

(f) **Products.** Fruits, vegetables, nuts, and other perishable farm products not covered by other regulations under the Act.

(g) **Office of inspection.** The office of an inspector of products covered by the regulations in this part.

(h) **Inspection certificate.** A certificate of the quality or condition of products issued by an inspector under the Act.

(i) **Interested party.** Any person having a financial interest in the products involved, including the shipper, the receiver, or the carrier or any authorized person in behalf of such party.

(j) **Regulations.** Rules and regulations of the Secretary under the Act.*† [Reg. 1, sec. 2]

ADMINISTRATION

51.3 Chief of Bureau. The Chief of the Bureau is charged with the administration of the provisions of the Act and the regulations in this part.*† [Reg. 2, sec. 1]

*†For statutory and source citations, see note to § 51.1.

WHERE SERVICE IS OFFERED

51.4 Inspection; where made. Products may be inspected at points indicated in paragraphs (a), (b), and (c) of this section whenever an official inspector is available.

(a) **Shipping points.** Inspection is available in all States with which the Bureau has entered into cooperative agreements providing for this service.³

(b) **Designated markets.** The following are designated as important central markets at which products may be inspected under the Act:

Albany, N. Y.	Honolulu, Hawaii.	Philadelphia, Pa.
Atlanta, Ga.	Houston, Tex.	Pittsburgh, Pa.
Baltimore, Md.	Indianapolis, Ind.	Portland, Oreg.
Boise, Idaho.	Jacksonville, Fla.	Providence, R. I.
Boston, Mass.	Kansas City, Mo.	Rochester, N. Y.
Buffalo, N. Y.	Los Angeles, Calif.	Sacramento, Calif.
Chicago, Ill. ³	Memphis, Tenn.	St. Louis, Mo.
Cincinnati, Ohio.	Milwaukee, Wis.	Salt Lake City, Utah.
Cleveland, Ohio.	Minneapolis, Minn.	San Diego, Calif.
Columbus, Ohio.	Newark, N. J.	San Francisco, Calif.
Denver, Colo.	New Haven, Conn.	San Juan, P. R.
Detroit, Mich.	New Orleans, La.	Seattle, Wash.
Fargo, N. Dak.	New York, N. Y. ¹	Springfield, Mass.
Fort Worth, Tex.	Norfolk, Va.	Washington, D. C. ¹
Harrisburg, Pa.	Oklahoma City, Okla.	Wilkes-Barre, Pa.
Hartford, Conn.	Omaha, Nebr.	

(c) **Other points.** Inspection may be made at any point near a designated market under conditions provided in § 51.34 (e), to the extent permitted by the time of the nearest inspector.*† [Reg. 3, sec. 1]

INSPECTION SERVICE

51.5 Kind of service. Inspection of products may be made according to quality or condition.*† [Reg. 4, sec. 1]

51.6 Who may obtain service. An application for inspection may be made by any financially interested person or his authorized agent, including Federal, State, county, and municipal governments, and common carriers.*† [Reg. 4, sec. 2]

51.7 How to make application. Application for inspection may be filed in the office of inspection or with an inspector. It may be made in writing, orally, by telegraph, or telephone. If made orally the inspector may require that it be confirmed by applicant in writing or by telegraph, stating the facts required by § 51.8. Application may be made for one or more lots, or may be a blanket application for inspection of all designated lots of a given commodity within a given period, or for all designated lots loaded or received at a given point.*† [Reg. 4, sec. 3]

³ Regional supervisory office. New York is supervisory headquarters for the territory east of Ohio and north of Maryland. Chicago is supervisory headquarters for the territory which includes the Lake States west of Pennsylvania, the Mississippi Valley, and Texas. Washington is supervisory headquarters for the Atlantic States south of Pennsylvania and Delaware. Full information as to places where shipping point inspection is available may be obtained by addressing the Bureau of Agricultural Economics, Washington, D. C.

51.8 Form of application. Each application for inspection shall state (a) the name and post-office address of the applicant and of the person, if any, making the application in his behalf; (b) the name and post-office address of the shipper; (c) the kind and quantity of the products involved; (d) the financial interest of the applicant (except the State) therein; (e) the identification of the products by (1) grade, brand, or other marks, if possible, and (2) car initials, car number, and name of carrier or number of truck or name of boat, if possible; (3) name and location of store, warehouse, or other place where the products are located; or (4) any other necessary information; and (f) the particular quality or condition concerning which inspection is requested, to which may be added the particular time and place at which it is desired that the inspection be made; (g) the name and address of the receiver when the lot is to be inspected in a receiving market; (h) the name of the shipping point and of the destination when known, and such other information as may be required by the Chief of Bureau.*† [Reg. 4, sec. 4]

51.9 When application deemed filed. An application shall be deemed filed when delivered to the proper office of inspection. A record showing the date and time of filing shall be made in such office.*† [Reg. 4, sec. 5]

51.10 When application may be rejected. An application may be rejected by the inspector in charge of the office of inspection in which it is filed, for noncompliance with the Act or any applicable regulation thereunder, and such inspector shall immediately notify the applicant of the reasons for such rejection.*† [Reg. 4, sec. 6]

51.11 When application may be withdrawn. An application may be withdrawn by the applicant at any time before the service is performed upon payment of any expenses incurred in connection therewith.*† [Reg. 4, sec. 7]

51.12 Authority of agent. Proof of the authority of any person applying for inspection in behalf of another may be required in the discretion of the inspector.*† [Reg. 4, sec. 8]

51.13 Accessibility of product. The applicant shall cause the products for which inspection is requested to be made accessible for inspection and to be so placed as to disclose their quality or condition.*† [Reg. 4, sec. 9]

51.14 Basis of service. Inspection and certification for quality or condition shall, unless the applicant shall request otherwise, be based upon the official and tentative standards of the United States Department of Agriculture or of any State or foreign country or shall be by description where official standards are lacking.*† [Reg. 4, sec. 10]

51.15 Order of inspection. Inspection shall be made in the order in which applications are received, except that precedence shall always be given (a) to the inspection of lots involved in Perishable Agricultural Commodities Act complaints and (b) to appeal inspections.*† [Reg. 4, sec. 11]

CROSS REFERENCE: For perishable Agricultural Commodities Act regulations, see § 46.33.

*†For statutory and source citations, see note to § 51.1.

51.16 Financial interest of inspector. No inspector shall inspect any products in which he is directly or indirectly financially interested.*† [Reg. 4, sec. 12]

51.17 Postponing inspection. If the inspector has reason to believe that because of latent defects due to climatic or other conditions he is unable to determine the true quality or condition of the product, he shall postpone examination of the product for such period as may, in his judgment, be reasonably necessary to enable him to determine its true quality or condition.*† [Reg. 4, sec. 13]

51.18 Certificate; form. Certificates shall be issued on forms approved by the Chief of the Bureau, Provided, That when application for inspection is made by any branch of the Federal Government or by a public institution or by anyone, for the purpose of determining whether food products for use by such applicant comply with contract specifications therefor, a formal certificate need not be issued, but the fact of such compliance or noncompliance may be indicated by appropriate stamp or mark on such products or the containers thereof, or otherwise, in the discretion of the inspector, Provided further, That memoranda of inspections showing the grades of individual growers' lots offered for manufacturing or other purposes may be issued in lieu of certificates on forms approved by the Chief of the Bureau.*† [Reg. 4, sec. 14]

51.19 Certificates; issuance. The inspector shall sign and issue a separate certificate for each lot of products inspected by him, except that when an inspection is restricted to condition a single certificate may be issued to cover all lots in a car. Each kind of fruit or vegetable shall constitute a separate lot, but different varieties of the same kind of fruit or vegetable, except peanuts, pecans, and other nuts, shall not be so considered.*† [Reg. 4, sec. 15]

51.20 Certificates; disposition. The original certificate and not to exceed two copies, if requested prior to issuance, shall be immediately delivered or mailed to the applicant or a person designated by him. One copy shall be filed in the office of the inspector, or of the co-operating agency, and one copy forwarded to the Chief of the Bureau, except that memoranda of inspections issued as provided in § 51.19 need not be so forwarded. Copies of certificates shall be kept on file until other disposition is ordered by the Chief of Bureau. In the case of any product with respect to which a marketing agreement or license is in effect under the provisions of the Agricultural Adjustment Act, as amended, copies of certificates covering inspection of such products shall be delivered to the control committee or supervisory body or bodies established thereunder upon the direction of the Secretary or his authorized agent, subject to such terms and conditions as the Secretary may prescribe, for the purpose of effectuating the purposes of said marketing agreement and license and the said Agricultural Adjustment Act. Copies will be furnished to other financially interested parties as outlined in § 51.34 (f).*† [Reg. 4, sec. 16]

51.21 Advance information. Upon request of an applicant, all or any part of the contents of the certificates may be telegraphed or

telephoned to him, or to any person designated by him, at his expense.*† [Reg. 4, sec. 17]

APPEAL INSPECTION

51.22 When appeal may be taken. An application for appeal inspection may be made whenever any financially interested person is dissatisfied with the determination stated in the original certificate.*† [Reg. 5, sec. 1]

51.23 How to obtain. Appeal inspection may be obtained by the applicant or other person financially interested in the product by filing a request for such appeal inspection (a) in the inspection office nearest the point where the product is located, or (b) with the inspector who made the original inspection, or (c) in any regional supervisory inspection office, or (d) with the Chief of the Bureau. The application for appeal shall state the reasons therefor and may be accompanied by a copy of any previous inspection certificate or inspection report, or any other information which the applicant shall have received regarding the quality or condition of the product at the time of the original inspection. Such application may be made in writing or orally, by telegraph, telephone, or otherwise. If made orally the person receiving the application may require that it be confirmed in writing.*† [Reg. 5, sec. 2]

51.24 Record of filing time. A record showing the date and time of filing such application shall be immediately made by the receiver thereof.*† [Reg. 5, sec. 3]

51.25 When appeal may be refused. If it shall appear that the reasons stated in an application for appeal inspection are frivolous or unsubstantial, or that the quality or condition of the products has undergone a material change since the original inspection, or that the products cannot be made accessible for a thorough examination of all parts of the lot, or the identity has been lost, or the regulations in this part have not been complied with, the application may be denied.*† [Reg. 5, sec. 4]

51.26 When appeal may be withdrawn. Any application for appeal inspection may be withdrawn by the applicant at any time before the inspection has been made upon payment of any expenses incurred in connection therewith.*† [Reg. 5, sec. 5]

51.27 When a second inspection is not an appeal. Inspections requested to determine factors of quality or condition which may have undergone material change since the original inspection, shall not be considered appeal inspections within the meaning of §§ 51.22–51.31. A second inspection requested for the purpose of securing an up-to-date certificate, but where the applicant does not question the correctness of the original certificate covering the lot in question, shall not be considered an appeal inspection within the meaning of §§ 51.22–51.31.*† [Reg. 5, sec. 6]

51.28 Order in which made. Appeal inspections shall as far as practicable be made at time requested by applicant and in the order in which applications are received. They shall take precedence

*†For statutory and source citations, see note to § 51.1.

over all other pending applications, except inspections covering lots involved in Perishable Agricultural Commodities Act cases.*† [Reg. 5, sec. 7]

CROSS REFERENCE: For inspection service under Perishable Agricultural Commodities regulations, see § 46.33.

51.29 Who shall pass upon appeals. Appeal inspections shall be made by inspectors specially designated therefor by the Chief of the Bureau, and such inspections shall be conducted jointly by two inspectors when practicable. No appeal inspector shall pass upon an appeal involving the correctness of a certificate issued by him.*† [Reg. 5, sec. 8]

51.30 Appeal findings. After an appeal inspection has been made a certificate designated as "Appeal inspection certificate" shall be signed and issued, referring specifically to the original certificate and stating the quality or condition of the product, as shown by the appeal inspection. In all other respects the provisions of §§ 51.5–51.21 shall apply to such appeal inspection certificate, except that if the applicant for appeal inspection be not the original applicant a copy of the appeal inspection certificate shall be mailed to the original applicant.*† [Reg. 5, sec. 9]

51.31 Superseded certificates. When an inspection certificate shall have been superseded under the regulations in this part by an appeal inspection certificate such inspection certificate shall become null and void and shall not thereafter represent the class, quality, or condition of the product described therein. If the original and all copies of the superseded certificate are not delivered to the person with whom the application for appeal inspection is filed, the officer issuing the appeal inspection certificate shall forward notice of such issuance and of the cancelation of the original certificate to such persons as he considers necessary to prevent fraudulent use of the canceled certificate.*† [Reg. 5, sec. 10]

LICENSED INSPECTORS

51.32 Who may be licensed as inspectors. Persons showing proper qualifications may be licensed by the Secretary as inspectors of products which may be inspected under the Act. All such licenses shall be countersigned by the supervising inspector under whose direction the licensee is to make inspections, or by such other official as may be designated by the Chief of the Bureau.*† [Reg. 6, sec. 1]

51.33 Suspension of licenses. Any license may be suspended, pending final action by the Secretary, by any official by whom it may be countersigned or by the Chief of the Bureau whenever such official shall deem such action to be for the good of the service. Within 7 days after any such suspension the licensee may file an appeal in writing to the Secretary, supported by any argument or evidence he may wish to offer in his behalf.*† [Reg. 6, sec. 2]

INSPECTION CHARGES

51.34 Fees and expenses. For each lot of products inspected a fee and expenses determined in accordance with paragraphs (a)–(f)

of this section, and § 51.37, or such supplemental schedules as may be furnished the inspector from time to time by the Secretary, shall be paid by the applicant.

(a) Basis for charges. The fee for each lot of products inspected by a salaried inspector acting exclusively for the Department of Agriculture, except peanuts, pecans, and other nuts, and under § 51.18, shall be on the following basis: \$4 when the quantity involved is more than one-half of a carload of the maximum customary size of such products but not more than a full carload, and \$2.50 when the quantity involved is not more than one-half of such carload; but the maximum fee for any carload not exceeding the maximum customary size shall be \$7.50. For each lot of peanuts, pecans, or other nuts inspected, except under § 51.18, the fee shall be \$5 when the quantity involved is not more than a full carload, Provided That different grades and varieties of peanuts shall be considered separate lots. When the lot involved is in excess of a carload or is not contained in cars, the quantity shall be calculated in terms of carloads and fractions thereof of the maximum customary size for such carloads and the rates aforesaid applied, except that when inspections are made on which formal certificates are not issued, as provided in § 51.18, or when the products inspected cannot readily be calculated in terms of carlots, or when the services rendered are such that a charge on the carload basis would be inadequate or inequitable, charges for inspection may be based on time consumed by the inspector in connection with such inspections, computed at the rate of not to exceed \$2 per hour, or the charges may be based upon the number of pounds or number of containers examined, provided such charges are in substantial conformity with the hourly or carload rate.

(b) Employee of United States Department of Agriculture. Fees for inspections made by a licensed inspector acting exclusively for the Bureau shall be those provided in the terms of his contract of employment.

(c) Under cooperative agreement. Fees for inspections made under cooperative agreements shall be those provided for by such agreements.

(d) For appeal inspection. Fees for appeal inspections of all products shall be double those for original inspections, except that when it is found that there was a material error in the determination based upon the original inspection no fee will be charged and except that appeal inspection for Government agencies shall be at actual cost, but the maximum fee for the reinspection of a single car shall not exceed \$15.

(e) For traveling expenses. Such further charges may be made for traveling expenses and other items paid or incurred by the Bureau in connection with an inspection made at a place where no inspector is located, or appeal inspection where the services of a second inspector are required, as will reimburse the Bureau. These charges shall be included with the fee for inspection on the bill furnished the applicant.

*†For statutory and source citations. see note to § 51.1.

(f) **For copies of inspection certificates.** For not to exceed three copies of a certificate furnished to any person financially interested in the products involved, except as provided in § 51.18, the fee shall be \$1, but the maximum fee for such copies in the case of a single car shall not exceed \$5.*† [Reg. 7, sec. 1]

51.35 How fees shall be paid. Fees shall be paid by the applicant in accordance with the directions on the fee bill furnished him by the inspector, and in advance if required by the inspector.*† [Reg. 7, sec. 2]

51.36 Disposition of fees. The fees covered by § 51.34 (a), (b), and (c) shall be disposed of as follows:

(a) Fees for inspections made by salaried inspectors acting exclusively for the Bureau shall be promptly remitted to the Bureau.

(b) Fees for inspections made by a licensed inspector acting exclusively for the Bureau, less the percentage thereof which he is allowed by the terms of his contract of employment as compensation for his services, shall be remitted to the Bureau.

(c) Fees for inspections made by an inspector acting under a cooperative agreement with a State or other organization shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected upon a cooperative agreement with a State as may be due the United States shall be remitted to the Bureau.

Fees covered by § 51.34 (d), (e), and (f) shall be remitted to the Bureau.*† [Reg. 7, sec. 3]

51.37 Refunds. Upon filing a declaration of his intention to avail himself of this privilege any applicant who shall have paid for 500 or more carload inspections of fruits and vegetables in any one market within the period of 1 year immediately following such filing shall receive a refund from the Department at the rate of \$1.50 per carload for the first 500 cars. For inspections in excess of 500 cars the fee shall be \$2.50 per carload for the remainder of the year unless the total number exceeds 1,000, in which event the applicant shall be entitled to a further refund at the rate of \$0.50 per carload for the entire number so inspected. For inspections in excess of 1,000 cars the fee shall be \$2 per car during the remainder of the year: Provided, That if at any time before the first 1,000 cars are inspected for such applicant the Bureau is unable during a continuous period of 30 days to furnish inspections when requested said refund of \$1.50 per car shall be made on such cars as have been inspected up to that time on which a refund has not been made.*† [Reg. 7, sec. 4]

MISCELLANEOUS

51.38 Fraud or misrepresentation. Any wilful misrepresentation or any deceptive or fraudulent practice made or committed by any applicant for inspection or reinspection or any wilful violation of the regulations in this part may be deemed sufficient cause for debarring the person guilty thereof from any further benefits of the Act.*† [Reg. 8, sec. 1]

51.39 Publication. Publication under the Act and the regulations in this part shall be made in service and regulatory announce-

ments of the Bureau and such other mediums as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 8, sec. 2]

51.40 Political activity. All inspectors authorized, either by appointment or license from the Secretary of Agriculture, to issue inspection certificates under the Act and the regulations in this part are forbidden, during the period of their appointment or license, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including temporary and cooperative employees, and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for dismissal in the case of appointees, and revocation of licenses in the case of licensees.*† [Reg. 8, sec. 3]

51.41 Identification. All inspectors shall have in their possession at all times Bureau identification cards, and shall identify themselves by such cards on request.*† [Reg. 8, sec. 4]

PART 52—CANNED FRUITS AND VEGETABLES (GRADING AND CERTIFICATION)

Sec.		Sec.	
	Definitions	52.18	When second grading is not an appeal.
52.1	Meaning of words.	52.19	Order in which made.
52.2	Terms defined.	52.20	Appeal findings.
	Administration		Fees
52.3	Chief of Bureau.	52.21	Method of fixing fees for grading.
	Where sampling service is offered	52.22	Amount of fees.
52.4	Official samples; where drawn.	52.23	Refunds.
	Application for grading	52.24	Additional charges.
52.5	Who may make application.	52.25	Score card; fee.
52.6	How to make application.	52.26	Copies of certificates; fee.
52.7	Form of application.	52.27	Fees for appeal grading.
52.8	When application may be rejected.	52.28	Fees assessed on "time" basis.
	Sampling and grading		Licensed samplers and official sampling
52.9	Accessibility of product.	52.29	Licenses for sampling; requirements.
52.10	Order of sampling and grading.	52.30	Drawing of samples.
	Certificate of grade	52.31	Method of drawing samples.
52.11	Issuance of certificates.	52.32	Samples to be forwarded to grading offices.
52.12	Disposition of certificates.	52.33	Suspension of sampler's license.
52.13	Notification of grading.	52.34	Method of grading.
52.14	Advance information.		Misrepresentation and fraud
52.15	Financial interest of grader.	52.35	Fraudulent practices.
	Appeal grading		Publication
52.16	Filing of application.	52.36	Publication media.
52.17	When appeal may be refused.		

CROSS REFERENCES

Canned Food Warehouses: See Part 110.

Requirements for canned foods under regulations issued under the Federal Food and Drugs Act: See Food and Drugs, 21 CFR 1.201–1.254.

*†For statutory and source citations, see note to § 51.1.

DEFINITIONS

Section 52.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 52.1 to 52.36, inclusive, issued under the authority contained in 49 Stat. 275; 7 U.S.C., Sup., 414.

†The source of §§ 52.1 to 52.36, inclusive, is Rules and regulations, grading and certification of canned fruits and vegetables, Secretary of Agriculture, Oct. 10, 1935.

52.2 Terms defined. For the purpose of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) **The Act.** The following provision of an Act of Congress entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1932, and for other purposes," approved February 23, 1931 (46 Stat. 1268; 7 U.S.C. 414):

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality and/or condition of cotton, tobacco, fruits and vegetables whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) **Secretary.** The Secretary or Acting Secretary of Agriculture of the United States.

(c) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(d) **Canned fruits and vegetables.** Any fruits or vegetables preserved in hermetically sealed containers and sterilized by heat.

(e) **Official grader.** An employee of the Department of Agriculture authorized by the Secretary to investigate and certify to any financially interested party the quality and condition of canned fruits and vegetables under the Act.

(f) **Official sampler.** An employee of the Department of Agriculture, or other person authorized or licensed by the Secretary, to draw official samples of canned fruits and vegetables under the Act and the regulations in this part.

(g) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(h) **Grade certificate.** A certificate issued under the Act, stating the grade, quality, and/or condition of canned fruits and vegetables.

(i) **Regulations.** Rules and regulations of the Secretary, under the Act, relating to canned fruits and vegetables.*† [Reg. 1, sec. 2]

ADMINISTRATION

52.3 Chief of Bureau. The Chief of the Bureau is charged with the supervision of the performance of all duties arising in the administration of the Act.*† [Reg. 2, sec. 1]

WHERE SAMPLING SERVICE IS OFFERED

52.4 Official samples; where drawn. (a) Official samples may be drawn by employees of the Department designated for the purpose at the following points and such other points as may be conveniently reached therefrom:

Albany, N. Y.	Houston, Tex.	Portland, Oreg.
Atlanta, Ga.	Indianapolis, Ind.	Providence, R. I.
Baltimore, Md.	Jacksonville, Fla.	Rochester, N. Y.
Boise, Idaho.	Kansas City, Mo.	Sacramento, Calif.
Boston, Mass.	Los Angeles, Calif.	St. Louis, Mo.
Buffalo, N. Y.	Memphis, Tenn.	Salt Lake City, Utah.
Chicago, Ill.	Milwaukee, Wis.	San Diego, Calif.
Cincinnati, Ohio.	Minneapolis, Minn.	San Francisco, Calif.
Cleveland, Ohio.	Newark, N. J.	San Juan, P. R.
Columbus, Ohio.	New Haven, Conn.	San Pedro, Calif.
Denver, Colo.	New Orleans, La.	Seattle, Wash.
Detroit, Mich.	New York, N. Y.	Springfield, Mass.
Fargo, N. Dak.	Norfolk, Va.	Tulsa, Okla.
Fort Worth, Tex.	Omaha, Nebr.	Vallejo, Calif.
Great Lakes, Ill.	Philadelphia, Pa.	Washington, D. C.
Harrisburg, Pa.	Pittsburgh, Pa.	Wilkes-Barre, Pa.
Hartford, Conn.		

NOTE: The above offices may be addressed as follows: Food Products Inspection Service, U. S. Department of Agriculture.

(b) Official grading may be done at Washington, D. C., and such other points as may be designated from time to time.*† [Reg. 3, sec. 1]

APPLICATION FOR GRADING

52.5 Who may make application. An application for grading service under the Act may be made by a State or by any person having a financial interest in the products involved, including canners, receivers, common carriers, or by any authorized person in behalf of such applicant. Such application may be filed with an official grader, or in any office mentioned in § 52.4 (a). Proof of the applicant's interest or of the authority of any person applying for grading in behalf of another may be required in the discretion of the official grader or may be transmitted through any licensed sampler or through the person drawing samples.*† [Reg. 4, sec. 1]

52.6 How to make application. Such application shall be in English, and may be made in writing or orally, by telegraph, telephone, or otherwise. It may be made for one or more cars, lot or lots, sample or samples of canned fruits and vegetables, or may be a blanket application for grading of all designated cars, lots or samples of canned fruits and vegetables within a given period, or within a given warehouse, store, or other place. If made orally, the official

*†For statutory and source citations, see note to § 52.1.

grader may require that it be confirmed in writing or by telegraph, setting forth the facts required by § 52.7.*† [Reg. 4, sec. 2]

52.7 Form of application. Each application for grading shall state (a) the name and post-office address of the applicant, and of the person making the application, if acting as agent for another; (b) the name and post-office address of the canner, if known; (c) the kind and quality of canned fruits and vegetables involved; (d) the financial interest of the applicant therein; (e) the identification of the canned fruits or vegetables by (1) the declared grade, label, brand, code or other marks and their meaning if known; and (2) the car initials, car number and name of common carrier, if possible; (3) name and location of warehouse, store or other place the canned fruits and vegetables are located; or (4) any other pertinent information; and (f) the particular quality or conditions concerning which inspection or grading is requested, including the time when the service is desired and where the products to be examined are located; (g) the name and address of the buyer when the canned fruits and vegetables are to be graded in the receiving market; (h) the name of the originating points and the destination, when known.*† [Reg. 4, sec. 3]

52.8 When application may be rejected. Any application, upon request of the applicant or for any noncompliance with the Act or any regulation thereunder, may be rejected by the official grader in charge of the office in which it is filed, and such grader shall immediately notify the applicant by telegraph at the applicant's expense or in writing of the reasons for such rejection.*† [Reg. 4, sec. 4]

SAMPLING AND GRADING

52.9 Accessibility of product. The applicant shall cause the canned fruits and vegetables for which grading is requested to be made accessible for sampling.*† [Reg. 5, sec. 1]

52.10 Order of sampling and grading. As many lots will be sampled and graded by official samplers and graders as facilities permit, and, as far as practicable, in the order in which applications are received. As far as practicable all samples submitted will be graded in the order in which they are received.*† [Reg. 5, sec. 2]

CERTIFICATE OF GRADE

52.11 Issuance of certificates. The official grader shall sign and issue a separate certificate for each lot of canned fruits and vegetables graded by him. If an application for grading is made by any branch of the Federal Government, or by a public institution, or by anyone for the purpose of determining whether canned fruits and vegetables for use by such applicant comply with contract specifications therefor, a formal certificate need not be issued, but the fact of such compliance or noncompliance with specifications may be indicated by an appropriate stamp or mark on the product or containers thereof, or otherwise, as the official grader may deem proper. Each kind of canned fruits and vegetables shall constitute a separate lot, and different types of the same kind of canned fruits and vegetables shall be considered separate lots.*† [Reg. 6, sec. 1]

52.12 Disposition of certificates. Immediately upon its issuance, the original certificate shall be delivered or mailed to the applicant or a person designated by him. Upon the request of the applicant prior to issuance, not more than two additional copies of the certificate may be issued to him without extra charge.*† [Reg. 6, sec. 2]

52.13 Notification of grading. Notification of grading shall be mailed or delivered to all parties who are entitled to copies of certificates, provided the addresses of the parties are known to the official grader.*† [Reg. 6, sec. 3]

52.14 Advance information. Upon request of the applicant and at his expense, all or any part of the contents of a certificate may be telegraphed or telephoned to him or to any person designated by him.*† [Reg. 6, sec. 4]

52.15 Financial interest of grader. No official grader shall grade any product in which he is directly or indirectly financially interested.*† [Reg. 6, sec. 5]

APPEAL GRADING

52.16 Filing of application. An application for appeal grading by the original applicant or other persons financially interested in the product may be filed, (a) in the grading office nearest the point where the product is located, or (b) with the official grader who performed the original grading, or (c) with the Chief of the Bureau, whenever such applicant or person is dissatisfied with the determination stated in the original certificate. Such application shall be filed within 30 days, exclusive of Sundays and legal holidays, from the date of the original grading certificate and shall state the reasons therefor and should be accompanied by a copy of any previous grading certificate, inspection report or other information which the applicant shall have received regarding the grade and condition of the product at the time of the original grading. Such application may be made in writing or by telegraph, telephone or otherwise.*† [Reg. 7, sec. 1]

52.17 When appeal may be refused. If it shall appear that the reasons stated in the application for appeal grading are frivolous or unsubstantial, or that the identity of the product has not been so maintained as to enable the grader to identify the lot as having been previously graded, or that the product has undergone material change since the original grading, or the regulations have not been complied with, the application may be denied. Otherwise, the appeal grading shall, if practicable, be made by official graders especially designated therefor by the Chief of the Bureau.*† [Reg. 7, sec. 2]

52.18 When second grading is not an appeal. Grading requested to determine the quality or condition of canned fruits and vegetables which may have undergone material change since the original grading shall not be considered an appeal grading within the meaning of §§ 52.16–52.20. Subsequent grading, for the purpose of securing up-to-date certificates when the applicant does not question the correctness of certificates previously issued covering the lot in question will not be considered appeal grading within the meaning of §§ 52.16–52.20.*† [Reg. 7, sec. 3]

*†For statutory and source citations, see note to § 52.1.

52.19 Order in which made. Appeal grading shall be made as far as possible in the order in which the applications therefor are filed and takes precedence over other pending applications.*† [Reg. 7, sec. 4]

52.20 Appeal findings. Immediately after an appeal grading has been completed, a certificate designated as "Appeal Grade Certificate" shall be signed and issued, referring specifically to the original certificate and stating the quality and condition of the product as shown by the appeal grading. In all other respects, the provisions of §§ 52.11–52.15 shall apply to such appeal grade certificate, except that if the applicant for appeal grading be not the original applicant a copy of the appeal grade certificate shall be mailed to the original applicant.*† [Reg. 7, sec. 5]

FEEES

52.21 Method of fixing fees for grading. (a) For each lot of canned fruits or vegetables graded, except for branches of the Federal Government, a fee shall be paid by the applicant and in advance if required by the official grader.

(b) A lot may consist of any number of containers, of one commodity and one grade.*† [Reg. 8, sec. 1]

52.22 Amount of fees. (a) For each lot of canned fruits or vegetables graded consisting of 600 cases but not more than 1,000 cases, the samples having been drawn by an employee of the U. S. Department of Agriculture, a fee of \$5.00 shall be collected for the lot. For such lots containing in excess of 1,000 cases, a fee shall be collected on the basis of \$1.00 for each 200 cases or fraction thereof, provided that a minimum fee of \$3.00 shall be collected for lots containing less than 600 cases, except as otherwise provided in §§ 52.21–52.28.

(b) For each lot of canned fruits or vegetables graded, samples having been drawn by a sampler licensed by the Secretary, and accompanied by a certificate of sampling, a fee shall be collected at 60 percent of the rate mentioned in paragraph (a) of this section, with a minimum of \$3.00.

(c) For each sample of 12 cans or less of canned fruits or vegetables graded, samples having been submitted by someone other than an employee of the U. S. Department of Agriculture, a fee of \$3.00 shall be paid.

(d) For the purpose of the regulations in this part, whether the canned fruits and vegetables be cased or uncased, a case shall be construed to consist of the usual number of cans ordinarily packed in a case. For example, 48 No. 1 picnic size cans, 24 No. 2, No. 2½, or No. 3 size cans, 12 No. 5 size, or 6 No. 10 size cans shall constitute a case.† [Reg. 8, sec. 2]

52.23 Refunds. (a) Any applicant who shall have paid for 50 or more gradings at any one office of official grading, in accordance with § 52.22, within the period of one year immediately following the filing of a declaration of his intention to avail himself of this privilege shall receive a refund from the Department at the rate of 25 percent

of the total amount paid for the first 50 gradings, after which the fee for such applicant shall be 75 percent of the fees mentioned in § 52.22 for the remainder of the year.

(b) Any applicant who shall have paid for 1,000 or more gradings at any one office of grading, in accordance with § 52.22, within the period of one year immediately following the filing of a declaration of his intention to avail himself of this privilege shall receive a refund from the Department at the rate of $33\frac{1}{3}$ percent of the rates provided in § 52.22, after which the fee for such applicant shall be $66\frac{2}{3}$ percent of the fees mentioned in § 52.22 for the remainder of the year.*† [Reg. 8, sec. 3.]

52.24 Additional charges. Such charges may be made for traveling expenses and other items paid or incurred by the Bureau in connection with grading or sampling, at points other than those named in § 52.4, or appeal grading where the services of an appeal grader are required, as will reimburse the Department.*† [Reg. 8, sec. 4.]

52.25 Score card; fee. If the applicant, when application is filed, requests a score card showing in detail the grading of each can graded, such score card shall be furnished for each 12 cans scored, for which an additional fee of 50¢ per card will be assessed.*† [Reg. 8, sec. 5.]

52.26 Copies of certificates; fee. A fee of \$1.00 each shall be assessed for copies of certificates furnished to persons having a financial interest in the canned fruits and vegetables involved, in addition to those mentioned in § 52.12.*† [Reg. 8, sec. 6.]

52.27 Fees for appeal grading. Fees for appeal gradings shall be double those for original gradings, except that when it is found that there was a material error in the determination based upon the original grading, no fee will be charged for the appeal grading.*† [Reg. 8, sec. 7.]

52.28 Fees assessed on "time" basis. When grading is done and formal certificates are not issued or when the services rendered are such that charges based upon the foregoing sections would be inadequate or inequitable, charges may be based on the time consumed by the official grader at the rate of not to exceed \$2.60 per hour.*† [Reg. 8, sec. 8]

LICENSED SAMPLERS AND OFFICIAL SAMPLING

52.29 Licenses for sampling; requirements. (a) Application for licenses to sample canned fruits and vegetables under the Act shall be made to the Chief of Bureau on forms furnished for the purpose by him.

(b) Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by: (1) Satisfactory evidence that he has passed his 21st birthday; (2) a statement indicating his present occupation; (3) a statement showing his occupation for ten years prior to date of application, together with names of employers; (4) a statement by the applicant that he agrees

*†For statutory and source citations, see note to § 52.1.

to comply with the terms of the Act, rules and regulations thereunder so far as they may relate to him; (5) a statement indicating the fees he will charge, if licensed; (6) such other information as the Chief of Bureau may require.*† [Reg. 9, sec. 1]

52.30 Drawing of samples. Each licensed sampler, when requested, shall without discrimination, as soon as practicable and upon reasonable terms, draw samples from such lots of canned fruits or vegetables as are in such condition as to permit adequate and proper sampling.*† [Reg. 9, sec. 2]

52.31 Method of drawing samples. (a) In the absence of specific instructions from the Bureau directing otherwise, each licensed sampler or employee of the Department authorized to sample canned fruits and vegetables for the purpose of the regulations in this part, shall so draw samples from different locations in each lot that the samples accurately reflect the quality and condition of the lot; 1 can to be drawn from each 1,000 cans in a lot of can sizes No. 3 and smaller, and 1 can for each 600 cans of sizes No. 5 and No. 10.

(b) If, in the opinion of the sampler, conditions require additional samples, such additional samples may be drawn as the official grader or licensed sampler may deem necessary.*† [Reg. 9, sec. 3]

52.32 Samples to be forwarded to grading offices. Samplers will forward, at the expense of the applicant, all samples drawn by them to such grading offices as the Bureau may direct, accompanied by a statement in duplicate, certifying to the identity of the lot.*† [Reg. 9, sec. 4]

52.33 Suspension of sampler's license. A sampler's license may be suspended, pending final action by the Secretary of Agriculture, by any official by whom it may be countersigned whenever such official shall deem such action to be for the good of the service. Within seven days after any such suspension, the licensee may file an appeal in writing to the Secretary of Agriculture, supported by any argument or evidence that he may wish to offer in his behalf.*† [Reg. 9, sec. 5]

52.34 Method of grading. Upon receipt of the sample at the office of the grader, the sample shall be divided, one-half to be used for grading and the remainder retained as a check sample. The check sample will be held until the applicant indicates that sale of the lot from which it was drawn has been completed and that there is no further use for it, but will not be held for a period exceeding one year from date of grading. Upon request of applicant, the check or comparison sample or samples will be returned to the applicant at his expense; otherwise, the samples will be disposed of in such manner as the Chief of Bureau may direct.*† [Reg. 9, sec. 6]

MISREPRESENTATION AND FRAUD

52.35 Fraudulent practices. Any wilful misrepresentation, or any deceptive or fraudulent practice made or committed by any applicant for grading or appeal grading including the submission of improperly drawn or false samples drawn with intent to deceive, or

the improper use of the grade certification on labels or invoices may be deemed sufficient cause for declining further applications for grading service from the person guilty thereof.*† [Reg. 10, sec. 1]

PUBLICATION

52.36 Publication media. Publication under the Act and this part shall be made in such media as the Bureau may from time to time designate for the purpose.*† [Reg. 11, sec. 1]

PART 53—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING AND CERTIFICATION)

Sec.		Sec.	
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53.1	Meaning of words.	53.21	Advance information.
53.2	Terms defined.		Appeal grading
	Administration	53.22	When appeal may be taken.
53.3	Chief of Bureau.	53.23	How to obtain.
	Where service is offered	53.24	Record of filing time.
53.4	Grading; where done.	53.25	When appeal may be refused.
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53.5	Kind of service.	53.27	When second grading is not an appeal.
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53.11	When application may be withdrawn.	53.32	Who may be licensed as graders.
53.12	Authority of agent.	53.33	Suspension of license.
53.13	Accessibility of product.		Inspection charges
53.14	Basis of service.	53.34	Fees and expenses.
53.15	Order of grading.	53.35	How fee shall be paid.
53.16	Financial interest of official grader.	53.36	Disposition of fees.
53.17	Investigation on motion of graders.		Miscellaneous
53.18	Certificate; form.	53.37	Fraud or misrepresentation.
53.19	Certificates; issuance.	53.38	Publication.
		53.39	Political activity.
		53.40	Identification.

DEFINITIONS

Section 53.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 53.1 to 53.40, inclusive, issued under the authority contained in 49 Stat. 1450; 7 U.S.C., Sup., 414.

†The source of §§ 53.1 to 53.40, inclusive, is Rules and regulations of the Secretary of Agriculture governing the grading and certification of meats, prepared meats, meat food products, and meat byproducts for class, quality (grade), and condition, April 1937, 1 F.R. 2126. (SRA, BAE 98, rev.)

53.2 Terms defined. For the purpose of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean—

(a) **The Act.** The following provisions of an Act of Congress entitled "An Act making appropriations for the Department of Agri-

*†For statutory and source citations, see note to § 52.1.

culture and for the Farm Credit Administration for the fiscal year ending June 30, 1937, and for other purposes", approved June 4, 1936 (49 Stat. 1450; 7 U.S.C., Sup., 414), or any future act of Congress conferring like authority:

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and condition of cotton, tobacco, fruits and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States, as prima facie evidence of the truth of the statement therein contained.

(b) Secretary. Secretary or Acting Secretary of Agriculture of the United States.

(c) Bureau. Bureau of Agricultural Economics of the United States Department of Agriculture.

(d) Person. Individual, association, partnership, or corporation.

(e) Official grader. Employee of the Department of Agriculture or other person authorized by the Secretary to investigate and certify to shippers and other interested parties the class, quality, grade, and condition of products under the Act.

(f) Products. Meats, prepared meats, meat food products, and meat byproducts.

(g) Office of grading. The office of an official grader of products covered by the regulations in this part.

(h) Grading certificate. Certificate of the class, quality (grade and condition of products issued by an official grader under the Act.

(i) Interested party. Anyone having a financial interest in the products involved, including the shipper, the receiver, or the carrier, or any authorized person in behalf of such party.

(j) Regulations. Rules and regulations of the Secretary under the Act.

(k) Class. Class is a subdivision of a given commercial product based on essential physical characteristics that differentiate between major groups of the same kind or species, for instance, the classes in beef are: steer, heifer, cow, stag, and bull.

(l) Quality. Quality in a product is a combination of its inherent properties which determines its relative degree of excellence.

(m) Condition. Condition of a commercial product denotes those characteristics affecting its merchantability, with special reference to state of preservation, cleanliness, soundness, wholesomeness, and fitness for human food.

(n) Grade. Grade is the last important commercial subdivision of a product based on certain definite value and preference-determining factors, such as conformation, finish, and quality in meats.

(o) **Carcass.** A carcass is the commercially prepared or dressed body of any cattle, sheep, swine, or goat intended for human food.

(p) **Meat.** Meat is the flesh derived from cattle, sheep, swine, or goats intended for human food with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the flesh.

(q) **Prepared meats.** Prepared meat is the product obtained by subjecting meat to a process of comminuting, drying, curing, smoking, cooking, seasoning, or flavoring, or to any combination of such processes to which no considerable quantity of any substance other than meat or meat byproducts has been added.

(r) **Meat food products.** A meat food product is any article of food or any article which enters into the composition of food for human consumption, which is derived or prepared, in whole or in part, by a process of manufacture, from any edible portion of cattle, sheep, swine, or goats, if such portion be all or a considerable and definite portion of the article—except such preparations as are for medicinal purposes only.

(s) **Meat byproducts.** Meat byproducts are all edible parts, other than meat, derived from cattle, sheep, swine, or goats, and include hearts, livers, kidneys, tongues, tails, sweetbreads, brains, lungs, melts, stomachs, tripe, lips, snouts, and ears.*† [Reg. 1, sec. 2]

ADMINISTRATION

53.3 Chief of Bureau. The Chief of the Bureau is charged with the administration of the provisions of the Act and the regulations in this part.*† [Reg. 2, sec. 1]

WHERE SERVICE IS OFFERED

53.4 Grading; where done. Products may be graded at points indicated in paragraphs (a), (b), and (c) of this section whenever an official grader is available.

(a) **Shipping points.** Grading may be done wherever products are offered for interstate shipment, including slaughtering plants, packing plants, warehouses, loading platforms, docks, or other places where these products are handled, kept, or stored.

(b) **Designated markets.** The following are designated as important central markets at which products may be graded under the Act:

Baltimore, Md.
Boston, Mass.
Buffalo, N. Y.
Chicago, Ill.
Cleveland, Ohio.
Columbus, Ohio.
Detroit, Mich.
Kansas City, Mo.
Los Angeles, Calif.
National Stock Yards, Ill.
New York, N. Y.

Oklahoma City, Okla.
Omaha, Nebr.
Philadelphia, Pa.
Phoenix, Ariz.
San Francisco, Calif.
Seattle, Wash.
Sioux City, Iowa.
South St. Paul, Minn.
Washington, D. C.
Wheeling, W. Va.
Wichita, Kans.

Other markets may be designated by the Secretary from time to time.

*†For statutory and source citations, see note to § 53.1.

(c) **Other points.** Grading may be done at any point near a designated market under conditions provided in § 53.34 (e), to the extent permitted by the time of the nearest official graders.*† [Reg. 3, sec. 1]

GRADING SERVICE

53.5 Kind of service. Examination, identification, and certification of products may be made according to class, quality (grade), and condition.*† [Reg. 4, sec. 1]

53.6 Who may obtain service. Application for grading may be made by any financially interested person or his authorized agent, including Federal, State, county, and municipal governments, and common carriers.*† [Reg. 4, sec. 2]

53.7 How to make application. Application for grading may be filed in the office of grading or with an official grader. It may be made in writing, orally, or by telegraph or telephone. If made orally, the official grader may require that it be confirmed in writing or by telegraph, stating the facts required by § 53.8.*† [Reg. 4, sec. 3]

53.8 Form of application. Each application for grading shall include the following information: (a) the date of application; (b) the description and location of the product to be graded; (c) the name and post-office address of the applicant and of the person, if other than the applicant, making the application in his behalf; (d) the interest of the applicant (except an official of the Federal Government or a State) therein; (e) the name, post-office address, and interest of all other known parties, except carriers, interested in the products involved; (f) the shipping point and destination of the product; (g) type of service desired; and (h) such other information as may be necessary for proper identification of the product or as may be required by the Chief of Bureau.*† [Reg. 4, sec. 4]

53.9 When application deemed filed. An application for grading shall be deemed filed when delivered to the proper office of grading. Record showing date and time of filing shall be made in such office.*† [Reg. 4, sec. 5]

53.10 When application may be rejected. Any application may be rejected by the official grader in charge of the office of grading in which it is filed for noncompliance with the Act or any applicable regulation thereunder, failure to make product available for examination, abusive language or act of violence, or interference with grader while performing grading, and such official grader shall immediately notify the applicant of the reasons for such rejection.*† [Reg. 4, sec. 6]

53.11 When application may be withdrawn. An application may be withdrawn by the applicant at any time before the service is performed upon payment of any expenses already incurred in connection therewith.*† [Reg. 4, sec. 7]

53.12 Authority of agent. Proof of the authority of any person applying for service in behalf of another may be required in the discretion of the official grader.*† [Reg. 4, sec. 8]

53.13 Accessibility of product. The applicant shall cause the products for which service is requested to be made accessible for grading and to be so placed as to disclose class, quality, and condition.*† [Reg. 4, sec. 9]

53.14 Basis of service. Examination, identification, and certification for class, grade, and condition shall be based upon the official or tentative standards of the Department of Agriculture or upon Federal specifications.*† [Reg. 4, sec. 10]

53.15 Order of grading. Service shall be rendered in the order in which applications are received, except that precedence may be given to applications made by another branch of the Federal Government, a State, or a municipality, and appeal grading.*† [Reg. 4, sec. 11]

53.16 Financial interest of official grader. No official grader shall grade any products in which he is directly or indirectly financially interested.*† [Reg. 4, sec. 12]

53.17 Investigation on motion of graders. A grader may of his own motion and without the use of any force, when authorized by the Chief of the Bureau, investigate the class, quality (grade), and condition of any products at such points as are provided under § 53.4, and may issue and transmit to the shipper of such products and other parties interested therein certificates or copies thereof showing the results of such investigations.*† [Reg. 4, sec. 13]

53.18 Certificate; form. Certificates shall include the following information: (a) the number of the certificate; (b) name of designated market and place of grading; (c) date and time of grading; (d) names and addresses of applicant, party in possession, and shipper and buyer, if known; (e) exact number of carcasses, sides, quarters, cuts, and packages of products by classes and grades examined, if graded; (f) if previously examined, reference to previous certificate by number; (g) if rejected or not graded, reason for rejecting or not grading; (h) for purposes of identification, the weight of each class, grade, and lot; (i) the amount of fees and expenses; (j) name of official grader or graders; (k) additional facts necessary to fully describe condition, class, and grade, or as may be required by the Chief of Bureau.*† [Reg. 4, sec. 14]

53.19 Certificates; issuance. The official grader shall sign and issue certificates covering lots of products personally graded by him unless through special arrangements approved by the Chief of Bureau this be not required, in which case complete records of the grading shall be furnished the Bureau; but in no case shall any grader sign a certificate covering any product not graded by him. Graders shall stamp, brand, tag, label, seal, or otherwise identify or supervise the stamping, branding, tagging, labeling, sealing, or otherwise identifying of each unit of product or package or container thereof with its class and quality (grade) as far as practicable, or the applicant may issue, when authorized by the Chief of the Bureau, certificates of quality of such forms as are approved by the Chief of the Bureau, the certificates of quality issued by the applicant to be used only by the

*†For statutory and source citations, see note to § 53.1.

applicant in such manner and for such purpose as is approved by the Chief of the Bureau.*† [Reg. 4, sec. 15]

53.20 Disposition of certificates. The original certificate, and not to exceed two copies if requested, upon issuance shall be immediately delivered or mailed to the applicant or a person designated by him. One copy shall be filed in the office of the official grader and one copy forwarded to the Chief of Bureau. Copies of certificates shall be kept on file until other disposition is ordered by the Chief of Bureau. Copies will be furnished to other financially interested parties as outlined in § 53.34 (f).*† [Reg. 4, sec. 16]

53.21 Advance information. Upon request of an applicant, all or any part of the contents of the certificate may be telegraphed, telephoned, or radioed to him, or to any person designated by him, at his expense.*† [Reg. 4, sec. 17]

APPEAL GRADING

53.22 When appeal may be taken. An application for appeal grading may be made whenever any financially interested party is dissatisfied with the determination stated in the original certificate.*† [Reg. 5, sec. 1]

53.23 How to obtain. Appeal grading may be obtained by the applicant or other person financially interested in the product by filing a request for such appeal grading (a) with the official in charge of the meat grading service at nearest designated market, or (b) with the grader who did the original grading, or (c) with the Chief of the Bureau. The application for appeal shall state the reasons therefor, and may be accompanied by a copy of any previous grading certificate or report, or any other information which the applicant shall have received regarding the product at the time of the original grading. Such application may be made in writing or orally, by telegraph, telephone, or otherwise. If made orally, the person receiving the application may require that it be confirmed in writing.*† [Reg. 5, sec. 2]

53.24 Record of filing time. A record showing the date and time of filing such application shall be immediately made by the receiver thereof.*† [Reg. 5, sec. 3]

53.25 When appeal may be refused. If it shall appear that the reasons stated in an application for appeal grading are frivolous or unsubstantial, or that the quality or condition of the products has undergone a material change since the original grading, or that the products cannot be made accessible for thorough grading, or that the identity has been lost, or that the regulations in this part have not been complied with, the application may be denied.*† [Reg. 5, sec. 4]

53.26 When appeal may be withdrawn. An application for appeal grading may be withdrawn by the applicant at any time before the appeal grading has been performed upon payment of any expenses incurred in connection therewith.*† [Reg. 5, sec. 5]

53.27 When second grading is not an appeal. Gradings requested to determine factors of quality or condition which may have

undergone material change since the original grading shall not be considered appeal gradings within the meaning of this section. Second grading, requested for the purpose of securing an up-to-date certificate and not involving any question as to the correctness of the original certificate covering the lot in question, shall not be considered appeal grading within the meaning of §§ 53.22–53.30.*† [Reg. 5, sec. 6]

53.28 Order in which made. Appeal gradings shall be performed as far as practicable at time requested by applicant and in the order in which applications are received. They shall take precedence over all other pending applications.*† [Reg. 5, sec. 7]

53.29 Who shall pass upon appeals. Appeal grading shall be passed upon by official graders designated therefor by the Chief of Bureau, and such grading shall be conducted jointly by two official graders when practicable. No appeal grader shall pass upon an application involving the correctness of a certificate issued by him.*† [Reg. 5, sec. 8]

53.30 Appeal findings. Immediately after an appeal grading has been made a certificate designated as "appeal grading certificate" shall be signed and issued referring specifically to the original certificate and stating the quality and condition of the product as shown by the appeal grading. In all other respects the provisions of §§ 53.5–53.21 shall apply to such appeal grading certificates except that if the applicant for appeal grading be not the original applicant, a copy of the appeal grading certificate shall be mailed to the original applicant.*† [Reg. 5, sec. 9]

53.31 Superseded certificates. When a grading certificate shall have been superseded under this part by an appeal grading certificate such grading certificate shall become null and void and shall not thereafter represent the class, quality, or condition of the product described therein. If the original and all copies of the superseded certificate are not delivered to the person with whom the application for appeal grading is filed, the officer or officers issuing the appeal grading certificate shall forward notice of such issuance and of the cancelation of the original certificate to such persons as he considers necessary to prevent fraudulent use of the canceled certificate.*† [Reg. 5, sec. 10]

LICENSED GRADERS

53.32 Who may be licensed as graders. Persons showing proper qualifications may be licensed by the Secretary as official graders of products which may be graded under the Act. All such licenses shall be countersigned by the specialist in charge of the Livestock, Meats, and Wool Division, the specialist in charge of grading in that Division, or by the supervising grader under whose direction the licensee is to grade.*† [Reg. 6, sec. 1]

53.33 Suspension of license. Any license may be suspended, pending final action by the Secretary, by an official by whom the license may be countersigned or by the Chief of the Bureau, whenever such official shall deem such action to be for the good of the service. Within 7 days after any such suspension the licensee may file an appeal in

*†For statutory and source citations, see note to § 53.1.

writing to the Secretary, supported by any argument or evidence that he may wish to submit in his behalf.*† [Reg. 6, sec. 2]

INSPECTION CHARGES

53.34 Fees and expenses—(a) Basis for charges. Fees and charges for grading services at designated markets shall be based on the actual time required to render the services, including the time required for travel of the official grader in connection therewith, at the rate of \$2 per hour for each official grader assigned unless otherwise provided by special agreement approved by the Chief of the Bureau: Provided, That no grading services shall be rendered for less than a minimum charge of \$1. Provided further, That the Chief of the Bureau may, in lieu of the fixed charge of \$2 per hour, fix other reasonable charges for the grading and certification of products at rates, that, in his judgment, will cover the costs of the services.

(b) Charges by graders employed or licensed by Department of Agriculture. Charges for services by employees of the Department and by graders licensed by the Secretary shall be at rates established herein.

(c) Charges under cooperative agreement. Charges for grading under cooperative agreements shall be those provided for by such agreements.

(d) For appeal grading. Fees and charges for appeal grading shall be double those for original grading; except that appeal grading for Federal Government agencies shall be at actual cost; Provided That when on appeal grading it is found that there was error in determination based upon the original grading equal to or exceeding 10 percent of the total weight of the products, no charge will be made unless special agreement with applicant is made in advance.

(e) Traveling expenses. Such further charges may be made for traveling expenses and other items paid or incurred by the Bureau in connection with grading service furnished at a place where no grader is located, or appeal grading where the services of a second grader are required, as will reimburse the Bureau. These charges shall be included with the fee for grading on the bill furnished the applicant.

(f) For copies of grading certificates. For not to exceed three copies of a certificate to any person financially interested in a product involved the fee shall be \$1.*† [Reg. 7, sec. 1]

53.35 How fee shall be paid. Fees and other charges shall be paid by the applicant in accordance with directions on the fee bill furnished him, and in advance if required by the official grader.*† [Reg. 7, sec. 2]

53.36 Disposition of fees—(a) By graders exclusively employed by the Department. Fees for grading done by graders exclusively employed by the Department shall be remitted to the Bureau for deposit into the Treasury as Miscellaneous Receipts.

(b) By graders under co-operative agreements. Fees for grading done by graders acting under co-operative agreements with a State or municipal organization, or other co-operating party, shall be

disposed of in accordance with the terms of such agreements. Such portion of fees collected under co-operative agreements as may be due the United States shall be remitted to the Bureau for deposit into the Treasury.*† [Reg. 7, sec. 3]

MISCELLANEOUS

53.37 Fraud or misrepresentation. Any wilful misrepresentation or any deceptive or fraudulent practice made or committed by any applicant for grading or appeal grading; or any wilful violation of the regulations in this part or of the supplementary rules and instructions issued by the Chief of the Bureau, may be deemed sufficient cause for debarring the person guilty thereof from any further benefits of the Act.*† [Reg. 8, sec. 1]

53.38 Publication. Publications under the Act and this part shall be made in the service and regulatory announcements of the Bureau and such other media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 8, sec. 2]

53.39 Political activity. All official graders authorized, either by appointment or license from the Secretary to issue grading certificates under the Act and this part are forbidden, during the period of their appointment or license, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including temporary and cooperative employees, and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for dismissal in the case of appointees, and revocation of licenses in the case of licensees.*† [Reg. 8, sec. 3]

53.40 Identification. All official graders shall have in their possession at all times Bureau identification cards and shall identify themselves by such cards on request.*† [Reg. 8, sec. 4]

PART 54—LIVE POULTRY AND DOMESTIC RABBITS (INSPECTION AND CERTIFICATION FOR CLASS, QUALITY, AND CONDITION)

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Sec.	Sec.
54.20 Certificate; form.	Licensed inspectors
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DEFINITIONS

Section 54.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 54.1 to 54.41, inclusive, issued under the authority contained in 50 Stat. 425; 7 U.S.C., Sup., 414.

†The source of §§ 54.1 to 54.41, inclusive, is Rules and regulations of the Secretary of Agriculture governing the inspection and certification of live poultry and live domestic rabbits for class, quality, and condition, Aug. 17, 1937, 2 F.R. 1414. (SRA, BAE 103)

54.2 Terms defined. For the purpose of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) **Act.** The following provisions of an Act of Congress entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1938", approved June 29, 1937 (50 Stat. 425; 7 U.S.C., Sup., 414), or any future act of Congress conferring like authority:

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and condition of cotton, tobacco, fruits and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products, when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) **Secretary.** Secretary or Acting Secretary of Agriculture of the United States.

(c) **Bureau.** Bureau of Agricultural Economics of the United States Department of Agriculture.

(d) **Person.** Individual, association, partnership, or corporation.

(e) **Inspector.** Employee of the Department of Agriculture or other person authorized by the Secretary to investigate and certify to shippers and other interested parties the class, quality, and condition of products under the Act.

(f) **Products.** Live poultry and live domestic rabbits.

(g) **Office of inspection.** The office of an inspector authorized to inspect products under the Act.

(h) **Inspection certificate.** Certificate of the class, quality, and condition of products issued by an inspector under the Act.

(i) **Interested party.** Anyone having a financial interest in the products involved, including the shipper, the receiver, the buyer or the carrier, or any authorized person in behalf of such party.

(j) **Regulations.** Rules and regulations of the Secretary governing the inspection of live poultry and live domestic rabbits under the Act.*† [Reg. 1, sec. 2]

ADMINISTRATION

54.3 Chief of Bureau. The Chief of Bureau is charged with the administration of the provisions of the Act and the regulations in this part and is authorized to issue such instructions as he may deem proper and necessary for the conduct of the service.*† [Reg. 2, sec. 1]

WHERE SERVICE IS OFFERED

54.4 Inspection; where made. Products may be inspected for the purpose of the Act at points indicated in paragraphs (a), (b), and (c) of this section whenever an inspector is available.

(a) **Shipping points.** Inspections may be made wherever products are offered for interstate shipment, including farms, factories, warehouses, loading platforms, wagons, trucks, railway cars, boats, vessels, and other places where products are handled, kept, or stored.

(b) **Designated markets.** Boston, Chicago, St. Louis, New York, Philadelphia, San Francisco, Newark, N. J., and Washington are hereby designated as important central markets at which products may be inspected under the Act.

(c) **Other points.** Inspections may be made at any other points under conditions provided in §§ 54.5–54.23 wherever inspectors are available.*† [Reg. 3, sec. 1]

INSPECTION SERVICE

54.5 Kind of service. Inspections may be made for class, quality, and condition.*† [Reg. 4, sec. 1]

54.6 Who may obtain service. Application for inspection may be made by a State, a municipal authority, or by any person having a financial interest in the products involved, including the shipper, the receiver, the buyer, or the carrier, or by any authorized person in behalf of such applicant.*† [Reg. 4, sec. 2]

54.7 How to make application. Application for inspection may be made in writing or orally, by telephone, telegraph, or otherwise.

*†For statutory and source citations, see note to § 54.1.

Such application may be filed in the office of inspection or with any authorized inspector. If made orally, the inspector may require that it be confirmed in writing.*† [Reg. 4, sec. 3]

54.8 Form of application. Application for inspection shall include the following information or such part of it as the inspector may require: (a) The date of application; (b) the identification and location of the product to be inspected; (c) the name and post-office address of the applicant and of the person, if any, making the application in his behalf; (d) the interest of the applicant (except the State) therein; (e) the name, post-office address, and interest of all other known parties, except carriers, interested in the product involved; (f) the shipping point and destination of the product; (g) the purpose of the inspection; and (h) such other information as may be necessary for proper identification of the product or as may be required by the inspector or the Bureau.*† [Reg. 4, sec. 4]

54.9 When application deemed filed. An application for inspection shall be deemed filed, when delivered to an inspector or the office of inspection.*† [Reg. 4, sec. 5]

54.10 When a second inspection may be had. When an inspection has been made of a lot of live poultry which is found to be in an over-cropped condition, a second or new inspection of this lot shall not be made until the day following, except as may be provided by the instructions of the Chief of Bureau or as an appeal inspection may be made in accordance with the provisions of §§ 54.24–54.32.*† [Reg. 4, sec. 6]

54.11 When application may be rejected. Any application may, for any noncompliance with the Act or any regulation thereunder or when the inspection applied for would be in conflict with any instructions of the Chief of Bureau or the cooperative agreement under which the inspection would be made or any applicable ordinance or regulation of the city or municipality in which the inspection is requested, be rejected by the inspector in charge of the office of inspection in which it is filed, and such inspector shall immediately notify the applicant by telegraph or in writing of the reasons for such rejection.*† [Reg. 4, sec. 7]

54.12 When application may be withdrawn. An application may be withdrawn by the applicant at any time before the service is performed, upon payment of any expenses incurred in connection therewith.*† [Reg. 4, sec. 8]

54.13 Authority of agent. Proof of the authority of any person applying for inspection on behalf of another may be required in the discretion of the inspector.*† [Reg. 4, sec. 9]

54.14 Accessibility of products. The applicant shall cause products for which inspection is requested to be made accessible for inspection and to be so placed as to disclose their class, quality, and condition.*† [Reg. 4, sec. 10]

54.15 Basis of service. Inspections for class, quality, and condition shall be based upon the official and tentative standards of the

U. S. Department of Agriculture and be made under such conditions and in accordance with such methods as may be prescribed, or approved by the Chief of Bureau.*† [Reg. 4, sec. 11]

54.16 Order of inspection. Inspection shall be made in so far as may be practicable in the order in which applications are received, except that precedence may be given to applications made by another branch of the Federal Government, or by a State, or municipality.*† [Reg. 4, sec. 12]

54.17 Sanitary condition of equipment. All equipment employed for the transportation, handling and feeding of live poultry, or live domestic rabbits, including cars, coops, baskets, trucks and other equipment, in which poultry or rabbits are offered for inspection, or is handled after inspection, shall be in a reasonably clean, sanitary condition, and any equipment that is not in such condition when poultry or rabbits are inspected in it shall be thoroughly and properly cleaned and, if deemed necessary, properly disinfected after the inspected poultry or rabbits have been removed therefrom, and proper evidence of such cleaning and disinfection shall be furnished the Bureau by the applicant for inspection.*† [Reg. 4, sec. 13]

54.18 Financial interest of inspector. No inspector shall inspect any products in which he is directly or indirectly financially interested.*† [Reg. 4, sec. 14]

54.19 Investigation on motion of inspectors. An inspector may of his own motion and without the use of any force, when authorized by the Bureau, investigate the class, quality and condition of any products at such points as are provided under § 54.4, and may issue and transmit to the shipper of such products and other parties interested therein certificates or copies thereof showing the results of such investigations. Such an inspection shall not be considered a regular inspection for the certification and approval of the products for transfer into coops or for sale.*† [Reg. 4, sec. 15]

54.20 Certificate; form. Certificates shall be issued on forms approved by the Chief of Bureau.*† [Reg. 4, sec. 16]

54.21 Certificates; issuance. The inspector shall sign and issue a separate certificate for each lot or lots of products inspected by him for one applicant, unless otherwise authorized.*† [Reg. 4, sec. 7]

54.22 Disposition of certificates. The original certificates upon issuance shall be delivered or mailed to the applicant or the person designated by him. If the shipper is known and is not the applicant, one copy shall be delivered or mailed to him. Copies may be furnished to cooperating agencies. One copy shall be filed in the office of the inspector and one copy forwarded to the Bureau. Copies of certificates shall be kept on file until disposition is ordered by the Bureau. Additional copies will be furnished on request to financially interested parties as provided in § 54.35 (h).*† [Reg. 4, sec. 18]

54.23 Advance information. Upon request of an applicant, all or any part of the contents of the certificate may be telegraphed or telephoned to him at his expense.*† [Reg. 4, sec. 19]

*†For statutory and source citations, see note to § 54.1.

APPEAL INSPECTION

54.24 When appeal may be taken. An application for appeal inspection may be made whenever any financially interested party is dissatisfied with the findings stated in the original certificate; provided the application is made within one-fourth hour from the time the inspection was completed when the inspection was for condition, or on the same business day when the inspection was for class or quality and before the identity of the original lot of products inspected has been lost. Upon satisfactory showing of evidence of fraud, or that because of distance the time provided for filing an application for appeal inspection is insufficient, or other good cause, the applicant may be allowed to file such application after the time herein prescribed, except when the size of crops of poultry is in question.*† [Reg. 5, sec. 1]

54.25 How to obtain. Appeal inspection may be obtained by the applicant or other person financially interested in the product by filing a request for such appeal inspection with the supervising inspector. The application for appeal shall state the reasons therefor, and may be accompanied by a copy of any previous inspection certificate, or any other information which the applicant shall have received regarding the product at the time of the original inspection. Such application may be made in writing, or orally, by telegraph, telephone, or otherwise. If made orally, the supervising inspector may require that it be confirmed in writing.*† [Reg. 5, sec. 2]

54.26 Record of filing time. A record showing the date and time of filing such application shall be immediately made by the receiver thereof.*† [Reg. 5, sec. 3]

54.27 When appeal may be refused. If it shall appear that the reasons stated in an application for appeal inspection are frivolous or unsubstantial, or the product cannot be made accessible for inspection, or the regulations in this part or any instructions issued thereunder by the Chief of Bureau have not been complied with, the application may be rejected and the applicant shall be notified immediately in writing by the supervising inspector of the reason for such rejection, and a statement of such action shall be included in the record of such application by the official making the same.*† [Reg. 5, sec. 4]

54.28 When appeal may be withdrawn. An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is made, upon payment of any expenses incurred in connection therewith.*† [Reg. 5, sec. 5]

54.29 Order in which made. Appeal inspections shall be performed as soon as possible and in the order in which applications are received. They shall take precedence over all other pending applications.*† [Reg. 5, sec. 6]

54.30 Who shall pass upon appeals. Applications for appeal inspection shall be passed upon by persons designated for the purpose by the Chief of Bureau, and such inspection shall be conducted

jointly by two inspectors when practicable. No inspector shall pass upon an application for an appeal inspection involving the correctness of a certificate issued by him unless he be so authorized by the Chief of Bureau.*† [Reg. 5, sec. 7]

54.31 Appeal findings. The inspector making an appeal inspection shall sign and issue an "appeal inspection certificate" referring specifically to all previous inspection certificates and stating the results of the last inspection. In all respects, the provisions of §§ 54.5–54.23 shall apply to such appeal inspection certificates, and copies of the appeal inspection certificate shall be sent to all parties to whom the last inspection certificate was furnished.*† [Reg. 5, sec. 8]

54.32 Superseded certificates. When an inspection certificate shall have been superseded under the regulations in this part by an appeal inspection certificate such inspection certificate shall become null and void and shall not thereafter represent the class, quality, or condition of the lot of products described therein. If the original and all copies of the superseded certificate are not delivered to the person with whom the application for appeal inspection is filed, notice of such issuance and of the cancelation of the original certificate shall be forwarded to such persons as he considers necessary to prevent fraudulent use of the canceled certificate.*† [Reg. 5, sec. 9]

LICENSED INSPECTORS

54.33 Who may be licensed as inspectors. Persons showing proper qualifications may be licensed by the Secretary as inspectors of products which may be inspected under the Act. All such licenses shall be countersigned by the specialist in charge of the Division of Dairy and Poultry Products in the Bureau, or the specialist in poultry inspection in that division, or by the supervising inspector under whose direction the licensee is to make inspections.*† [Reg. 6, sec. 1]

54.34 License; suspension. Any license may be suspended pending final action by the Secretary, by any official by whom it may be countersigned, or by the Chief of Bureau, whenever such official shall deem such action to be for the good of the service. Within seven days after such suspension the licensee may file an appeal in writing to the Secretary, supported by any argument or evidence that he may wish to offer in his behalf.*† [Reg. 6, sec. 2]

CHARGES FOR INSPECTION SERVICE

54.35 Fees and expenses—(a) Basis for charges. Fees and charges for inspection service at shipping points, designated markets, and other points, shall be based upon the actual time required to make the inspection and the time required for travel of the inspector in connection therewith between the office of inspection and the place of inspection and waiting time of the inspector if the product is not ready for inspection on arrival of the inspector, at the rate of \$2 per hour for each inspector assigned or at the rates specified under paragraph (b) of this section, unless otherwise provided by

*†For statutory and source citations, see note to § 54.1.

special agreement or by supplemental schedules approved by the Chief of Bureau; Provided That an additional fee of \$3 shall be charged when the inspection is made under conditions where the entire lot of the product is not readily accessible to the inspector; Provided further That the Chief of Bureau may in lieu of the fixed charge of \$2 per hour or the rates specified in paragraph (b) of this section fix other reasonable charges for the inspection of products at rates which in his judgment will cover the cost of the service; and except that inspection for Federal Government agencies shall be at actual cost.

(b) Coop fees. For each lot of product inspected for condition, pursuant to the regulations in this part, the fee shall be on the basis of the number of coops or baskets in such lot, as follows:

For 5 standard (3' x 6') coops or less	\$1.00
For 6 to 10 standard (3' x 6') coops	1.50
For 11 to 20 standard (3' x 6') coops	2.00
For 21 to 40 standard (3' x 6') coops	3.00
For 41 to 60 standard (3' x 6') coops	4.00
Over 60 standard (3' x 6') coops, up to a carload	5.00
For not to exceed 5 standard (2' x 3') baskets or less	0.25
For 6 to 10 standard (2' x 3') baskets	0.40
For 11 standard (2' x 3') baskets or more	per basket 0.04

Provided, That when baskets or coops are of larger size than the standard sizes specified above, an additional fee shall be charged for such larger size baskets or coops, based upon their size in relation to the standard sizes specified above.

(c) Carlot fee. For each carlot of product inspected for condition, pursuant to the regulations in this part, the fee shall be \$5.

(d) Under cooperative agreement. Fees for inspections made under cooperative agreement shall be those provided for by such agreements.

(e) For appeal inspections. Fees for appeal inspection shall be three times those for original inspections except that no fee will be charged when it is found that there was a material error in the certificate from which the appeal was taken.

(f) Other than regular hours. Fees for inspections made during hours other than the regular hours of inspection or an extension of the regular hours of inspection shall be one and one-half times those for inspections made during regular hours.

(g) Travel expense, etc. Further charges may be made for actual traveling expenses and other items paid or incurred in connection with inspections or appeal inspections made at a place where inspector is not regularly stationed.

(h) For additional copies of inspection certificates. Except as provided by § 54.21, a fee of \$1 shall be charged for not to exceed three additional copies of a certificate furnished to any person financially interested in the product covered by the certificate.*† [Reg. 7, sec. 1]

54.36 How fee shall be paid. Fees and other charges shall be paid by the applicant in accordance with the direction on the fee bill furnished him, and in advance if required by the inspector.*† [Reg. 7, sec. 2]

54.37 Disposition of fees. Fees covered by § 54.35 shall be disposed of as follows:

Fees and charges for inspections made by an inspector acting exclusively for the Bureau shall be remitted promptly to the Bureau. Fees and charges for inspections made by licensed inspectors acting exclusively for the Bureau, less the percentage thereof which he is allowed by the terms of his contract of employment as compensation for his services, shall be remitted to the Bureau.

Fees and charges for inspections made under cooperative agreements with a State or other organization or agency shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may accrue to the United States shall, when due, be promptly remitted to the Bureau.*† [Reg. 7, sec. 3]

MISCELLANEOUS

54.38 Fraud or misrepresentation. Any wilful misrepresentation or any deceptive or fraudulent practice made or committed by any person in connection with (a) the making or filing of an application, or (b) the use of an inspection or appeal inspection certificate issued by an inspector under the regulations in this part, or (c) the use of an official stamp, tag, seal, mark, or label, or (d) any wilful violation of the regulations in this part or of the supplementary rules and instructions issued by the Chief of the Bureau, may be deemed sufficient cause for debarring the person guilty thereof from any benefits of the Act.*† [Reg. 8, sec. 1]

54.39 Publication. Publications under the Act and the regulations in this part shall be made in the service and regulatory announcements of the Bureau and such other mediums as the Chief of Bureau may from time to time designate for the purpose.*† [Reg. 8, sec. 2]

54.40 Political activity. All inspectors authorized, either by appointment or license from the Secretary of Agriculture, to issue inspection certificates under the Act and the regulations in this part are forbidden, during the period of their appointment or license, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including temporary and cooperative employees, and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for dismissal in the case of appointees, and revocation of licenses in the case of licensees.*† [Reg. 8, sec. 3]

54.41 Identification. All inspectors shall have in their possession at all times Department identification cards and shall identify themselves by such cards on request.*† [Reg. 8, sec. 4]

*†For statutory and source citations, see note to § 54.1.

**PART 55—BUTTER, CHEESE, EGGS, DRESSED POULTRY,
AND DRESSED DOMESTIC RABBITS (GRADING AND
CERTIFICATION FOR CLASS AND CONDITION)**

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DEFINITIONS

Section 55.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 55.1 to 55.40, inclusive, issued under the authority contained in 47 Stat. 637, 1459; 7 U.S.C. 414.

†The source of §§ 55.1 to 55.40, inclusive, (except for the amendment noted in the text,) is Rules and regulations of the Secretary of Agriculture governing the grading and certification of butter, cheese, eggs, dressed poultry, and dressed domestic rabbits for class, quality (grade), and condition, Dec. 1932, as amended, Dec. 11, 1935, May 26, 1933. (SRA, BAE 137)

55.2 Terms defined. For the purpose of this part, unless the context otherwise require the following terms shall be construed, respectively, to mean:

(a) **The Act.** The following provisions of an Act of Congress entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1933," approved July 7, 1932 (47 Stat. 637; 7 U.S.C. 414):

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consum-

ing organizations, boards of trade, chambers of commerce, or other associations of business men or corporations engaged in the production, transportation, marketing and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and/or condition of cotton, tobacco, fruits and vegetables, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, including payment of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) **Person.** Individual, association, partnership, or corporation.

(c) **Secretary.** Secretary or Acting Secretary of Agriculture of the United States.

(d) **Bureau.** Bureau of Agricultural Economics of the United States Department of Agriculture.

(e) **Official grader.** Employee of the Department of Agriculture or other person authorized by the Secretary to investigate and certify to shippers and other interested parties the class, quality, and/or condition of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits under the Act.

(f) **Office of grading.** The office of an official grader authorized to grade butter, cheese, eggs, dressed poultry, and/or dressed domestic rabbits under the Act.

(g) **Grading certificate.** Certificate of the class, quality, and/or condition of butter, cheese, eggs, dressed poultry, and dressed domestic rabbits issued by an official grader under the Act.

(h) **Regulations.** Rules and regulations of the Secretary governing the grading and certification of butter, cheese, eggs, dressed poultry of the regulations in this part.*† [Reg. 2, sec. 1]

ADMINISTRATION

55.3 Chief of Bureau. The Chief of the Bureau is charged with the supervision of the performance of all duties arising in the administration of the regulations in this part.*† [Reg. 2, sec. 1]

WHERE SERVICE IS OFFERED

55.4 Grading; where done. Butter, cheese, eggs, dressed poultry, and/or dressed domestic rabbits may be graded for the purpose of the Act at points indicated in paragraphs (a), (b), and (c) of this section whenever an official grader is available.

(a) **Shipping points.** Grading may be made wherever butter, cheese, eggs, dressed poultry, or dressed domestic rabbits are offered for interstate shipment, including farms, factories, warehouses, loading platforms, wagons, trucks, railway cars, boats, vessels, and other places where these products are handled, kept, or stored.

(b) **Designated markets.** Boston, Chicago, New York, Philadelphia, Duluth, Minneapolis, San Francisco, Los Angeles, Portland, Oreg., Seattle, Richmond, Va., Parkersburg, W. Va., Orlando, Fla., and Washington are hereby designated as important central markets.

*†For statutory and source citations, see note to § 55.1.

Other important central markets at which official graders are available will be designated by the Secretary from time to time.

(c) Other points. Grading may be done at any point near a designated market under conditions provided in §§ 55.10–55.13 to the extent permitted by the time of official graders who are available for gradings at such other points.*† [Reg. 3, sec. 1]

APPLICATION FOR GRADING

55.5 Who may obtain grading. An application for grading of butter, cheese, eggs, dressed poultry or dressed domestic rabbits under the Act may be made by a State or by any person having a financial interest in the butter, cheese, eggs, dressed poultry, or dressed domestic rabbits involved, including the shipper, the receiver, or the carrier, or by any authorized person in behalf of such applicant.*† [Reg. 4, sec. 1]

55.6 How grading may be obtained. Application for grading of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits under the Act may be made in writing or orally, by telegraph, telephone, or otherwise. Such application may be filed in the office of grading or with any authorized official grader at or nearest the place where the grading is desired. If made orally, the official grader may require that it be confirmed in writing.*† [Reg. 4, sec. 2]

55.7 Form of application. Application for grading of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits under the Act shall be in English, and when requested by the official grader to be in writing shall include the following information: (a) The date of application; (b) the identification and location of the product to be graded; (c) the name and post-office address of the applicant and of the person, if any, making the application in his behalf; (d) the interest of the applicant (except the State) therein; (e) the name, post-office address, and interest of all other known parties, except carriers, interested in the butter, cheese, eggs, dressed poultry, or dressed domestic rabbits involved; (f) the shipping point and destination of the product; (g) the purpose of the grading; and (h) such other information as the official grader may require.*† [Reg. 4, sec. 3]

55.8 When application may be rejected. Any application may, upon request of applicant or for noncompliance with the Act or any regulation thereunder, be rejected by the official grader in charge of the office of grading in which it is filed, and such official grader shall immediately notify the applicant by telegraph or in writing of the reasons for such rejection.*† [Reg. 4, sec. 4]

55.9 Authority of agent. Proof of the authority of any person applying for grading on behalf of another may be required in the discretion of the official grader.*† [Reg. 4, sec. 5]

GRADING

55.10 Forms and basis of grading. (a) Grading may be made for class, quality, and/or condition.

(b) Grading for class, quality, and/or condition shall be based upon such standards and grades and be made under such conditions and in accordance with such methods as may be prescribed, approved, or promulgated by the Chief of Bureau.*† [Reg. 5, sec. 1]

55.11 Accessibility of products. The applicant shall cause the butter, cheese, eggs, dressed poultry, or dressed domestic rabbits for which grading is requested to be made accessible for grading, and to be so placed as to disclose its quality and condition.*† [Reg. 5, sec. 2]

55.12 Order of grading. Grading service shall be rendered as far as practicable in the order in which applications are received, except that preference may be given to applications made by a State.*† [Reg. 5, sec. 3]

55.13 Financial interest of official graders. No official grader shall grade any butter, cheese, eggs, dressed poultry, or dressed domestic rabbits, in which he is directly or indirectly financially interested.*† [Reg. 5, sec. 4]

GRADING CERTIFICATES

55.14 Grade certificate for each lot. The official grader shall sign and issue a separate certificate for each lot of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits graded by him. The official grader also, when authorized by the Chief of the Bureau, may stamp, tag, or label each unit of product or package of product in the lot with the class, grade, or quality of the product, or the applicant may issue, when authorized by the Chief of the Bureau certificates of quality of such form as are approved by the Chief of the Bureau, the certificates of quality issued by the applicant to be used only by the applicant in such manner and for such purpose as is approved by the Chief of the Bureau.*† [Reg. 6, sec. 1]

55.15 Disposition of certificates. The original grading certificate immediately upon its issuance shall be delivered or mailed to the applicant or person designated by him. If the shipper is known and is not the applicant, one copy shall be delivered or mailed to him. Copies will be furnished to other financially interested persons on request. Extra copies may be obtained by a financially interested party upon payment of the fees provided under § 55.29 (f).*† [Reg. 6, sec. 2]

55.16 Advance information. Upon request of an applicant, all or any part of the contents of the certificate may be telegraphed or telephoned to him at his expense.*† [Reg. 6, sec. 3]

55.17 Filing of certificates. One copy of each certificate issued shall be filed in the office of the official grader issuing it and one filed either in the office of the field supervising grader or forwarded to the Chief of the Bureau. They shall be kept on file until other disposition is ordered by the Chief of the Bureau.*† [Reg. 6, sec. 4]

APPEAL GRADING

55.18 When appeal grading may be done. Whenever the original applicant or other interested party has reason to believe that the

*†For statutory and source citations, see note to § 55.1.

class, quality, or condition of a lot of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits on which a grading certificate has been issued does not conform to the condition, quality, or class stated in such certificate he may make application for appeal grading, provided the application is made within 24 hours following the hour of the original grading and the identity of the butter, cheese, eggs, dressed poultry, or dressed domestic rabbits graded in the original lot has not been lost.*† [Reg. 7, sec. 1]

55.19 How to obtain appeal grading. Application for appeal grading of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits under the Act may be made in writing or orally, by telegram, telephone, or otherwise. Such application may be made to (a) any official grader, (b) a supervising official grader, or (c) the Chief of the Bureau. If made orally, the person receiving the application may require that it be confirmed in writing. Such application shall give the reasons therefor and shall be accompanied by the certificate previously issued on the lot, if it is in the possession of the applicant.*† [Reg. 7, sec. 2]

55.20 Record of filing time. A record showing the date and time of filing such application shall be made by the receiver thereof.*† [Reg. 7, sec. 3]

55.21 When appeal may be withdrawn. An application for appeal grading may be withdrawn by the applicant at any time before the appeal grading is made, upon payment of any expense incurred in connection therewith.*† [Reg. 7, sec. 4]

55.22 Who shall pass upon appeals. Applications for appeal grading shall be passed upon by official graders designated for the purpose by the Chief of the Bureau.*† [Reg. 7, sec. 5]

55.23 When an appeal grading may be refused. If it shall appear that the reasons stated in an application for appeal grading are frivolous or unsubstantial, or that the quality or condition of the butter, cheese, eggs, dressed poultry, or dressed domestic rabbits has undergone material change since the last previous grading, or appeal grading, or the identical butter, cheese, eggs, dressed poultry, or dressed domestic rabbits, can not be made accessible for grading, or the Act or the regulations in this part have not been complied with, the application may be rejected and the applicant shall be notified the same day, by telegraph or in writing of the reason for such rejection, and a statement of such action shall be included in the record of such application by the official making the same. Upon the rejection or withdrawal of an application for appeal grading, any grading certificate filed therewith shall be immediately returned to the person by whom filed, or delivered upon his written order.*† [Reg. 7, sec. 6]

55.24 New gradings, or regradings. Gradings requested to determine the class, quality, and/or condition of butter, cheese, eggs, dressed poultry or dressed domestic rabbits which have been previously graded, shall be considered as new gradings or regradings unless the applicant questions the correctness of the last previous

certificate issued on the product, in which event the applicant shall apply for an appeal grading. If the application for an appeal grading is rejected, an application for a new original grading may be made.*† [Reg. 7, sec. 7]

55.25 Certificate of appeal grading. The official grader making an appeal grading, shall sign and issue an "Appeal grading certificate," superseding, and referring specifically to the original grading certificate from which the appeal was taken, and stating the quality and condition of the butter, cheese, eggs, dressed poultry, or dressed domestic rabbits, as determined by the appeal grading. The provisions of §§ 55.14–55.17 shall apply to appeal grading certificates, except that copies of the appeal grading certificates shall be sent to all known interested parties.*† [Reg. 7, sec. 8]

55.26 Extension of time. Upon satisfactory showing of evidence of fraud, or intent of fraud, or that on account of distance the time of filing is insufficient, or other good cause, the person mentioned in § 55.19, to whom the application for appeal grading is made, may permit the filing of such application after the time prescribed therefor in this part, and a statement of such action shall be included in the record of such appeal grading by the official making the same.*† [Reg. 7, sec. 9]

55.27 Superseded certificates. When a grading certificate shall have been superseded under the regulations in this part by an appeal grading certificate, such grading certificate shall not thereafter represent the class, quality, and/or condition of the lot of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits, described therein. If the original and all copies of the superseded certificate are not delivered to one person with whom the application for appeal grading is filed, the officer issuing the appeal grading certificate shall forward notice of such issuance and of the cancelation of the original certificate to such persons or firms as he considers necessary to prevent fraudulent use of the canceled certificate.*† [Reg. 7, sec. 10]

LICENSED OFFICIAL GRADERS

55.28 Official graders; licensing; suspension. (a) Persons showing proper qualifications may be licensed by the Secretary of Agriculture as official graders of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits, which may be graded under this Act. All such licenses shall be countersigned by the specialist in charge of the Division of Dairy and Poultry Products in the Bureau, the specialist in grading in that division, or by the supervising grader under whose direction the license is to work.

(b) Any such license may be suspended, pending final action by the Secretary of Agriculture, by any official by whom it may be countersigned or by the Chief of the Bureau, whenever such official shall deem such action to be for the good of the service. Within seven days after such suspension the licensee may file an appeal in writing to the Secretary of Agriculture supported by any argument or evidence that he may wish to offer in his behalf.*† [Reg. 8, sec. 1]

*†For statutory and source citations, see note to § 55.1.

FEES AND CHARGES

55.29 Fees and expenses. The fees and charges to be collected for each lot of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits, graded or appeal graded under the regulations in this part, at shipping points, designated markets, and other points, shall be as follows, unless otherwise specifically provided in supplemental schedules subsequently furnished the official grader by the Secretary, or unless the grading or appeal grading is made under a cooperative agreement with a State or other agency, when the fees and charges to be collected shall be those provided for under the agreement: Provided, however, That an additional fee of \$3 shall be charged when the grading or appeal grading is made in a freight or express car or other place where the entire lot of the product is not readily accessible to the grader.

(a) Butter and cheese grading fees. For each lot of butter or cheese graded for class, quality, and/or condition, pursuant to the regulations in this part, the fee shall be on the basis of the approximate net weight or on the number of churnings or vats of butter or cheese in such lots, as follows:

(1) When each separate churning or vat is not indicated by number or otherwise on the package:

For 1,500 pounds or less-----	\$1. 50
For 1,501 pounds to 3,000 pounds, inclusive-----	2. 25
For 3,001 pounds to 6,000 pounds, inclusive-----	3. 00
For 6,001 pounds to 10,000 pounds, inclusive-----	3. 75
For each additional 10,000 pounds or fraction thereof beyond 10,000 pounds an additional charge of-----	. 75

(2) When each separate churning or vat is indicated by number or otherwise on the packages:

For 7 or less churnings or vats-----	\$1. 50
For each additional churning or vat beyond 7 an additional charge of----	. 15

(b) Egg grading fees. For each lot of eggs graded for class, quality, and/or condition, pursuant to the regulations in this part, the fees shall be based on the gross number of packages in such lot, as follows:

For 2 packages or less-----	\$0. 50
For 3 to 15 packages, inclusive-----	1. 00
For 16 to 25 packages, inclusive-----	1. 50
For 26 to 50 packages, inclusive-----	2. 25
For 51 to 100 packages, inclusive-----	3. 00
For 101 to 200 packages, inclusive-----	4. 00
For 201 to 350 packages, inclusive-----	5. 00
For 351 to 550 packages, inclusive-----	6. 00
For additional 100 packages or fraction thereof an additional charge of----	1. 00

(c) Fees for inspection of frozen eggs for condition. For each lot of frozen eggs inspected for condition pursuant to the regulations in this part, the fees shall be based on the gross number of packages in such lot as follows:

(1) When the warehouse in which the eggs are located is within reasonably easy access from the office of inspection and when assist-

ance is furnished in opening and closing cans and otherwise making the samples ready for examination:

For 50 cans or less----- \$2. 50
For each additional 50 cans or fraction thereof an additional charge of-- . 25

(2) When the warehouse at which the eggs are located is not within reasonably easy access from the office of inspection or when assistance is not furnished in opening and closing cans and otherwise making the samples ready for examination, charges in addition to those specified in (1) may be made to cover the additional time spent in traveling to and from the warehouse and in preparing the samples for examination, at the rate of \$2.00 per hour, and for travel costs incurred.

(d) Dressed poultry and dressed domestic rabbits grading fees. For each lot of dressed poultry, or dressed domestic rabbits, graded for class, quality, and/or condition pursuant to the regulations in this part, the fee shall be on the basis of the approximate net weight of the dressed poultry or dressed domestic rabbits in such lot, as follows:

For 50 pounds or less----- \$0. 50
For 51 pounds to 500 pounds, inclusive----- 1. 00
For 501 pounds to 1,500 pounds, inclusive----- 1. 50
For 1,501 pounds to 3,000 pounds, inclusive----- 2. 00
For 3,001 pounds to 10,000 pounds, inclusive----- 4. 00
For 10,001 pounds to 20,000 pounds, inclusive----- 6. 00
For 20,001 pounds to 30,000 pounds, inclusive----- 8. 00

(e) Fees may be based on time required. In lieu of all fees above specified in this section, the fee for each lot of butter, cheese, eggs, dressed poultry, or dressed domestic rabbits, graded for class, quality, and/or condition pursuant to the regulations in this part may be based, when it is more expedient or equitable, upon the time actually required in making the grading at the rate of \$2 per hour.

(f) Extra copies of certificates. Extra copies of grading certificates may be supplied to financially interested persons by the office where the original certificate was issued upon payment of a fee of 25 cents for each run of not more than four copies.

(g) Fees for appeal grading. Fees for appeal grading shall be three times those for original gradings, except that no fee will be charged when it is found that there was a material error in the certificate issued based upon the original grading.

(h) Travel expenses, etc. Such charges may be made for traveling expenses and other items paid or incurred by the Department of Agriculture as will reimburse the Department.* [Reg. 9, sec. 1, SRA, BAE 137, Sept. 13, 1932, as amended Dec. 11, 1935]

55.30 How fees shall be paid. The fees or charges for each grading or appeal grading shall be paid by the applicant in accordance with the directions on the fee bill furnished him and in advance if required by the official grader. Such fees and charges as are due the Department of Agriculture shall be remitted promptly to the disbursing clerk of the Department of Agriculture.*† [Reg. 9, sec. 2]

MISREPRESENTATION AND FRAUD

55.31 Misrepresentation; fraud. Any wilful misrepresentation or any deceptive or fraudulent practice made or committed by any person in connection with the making or filing of an application; the use of a grading or appeal grading certificate or a certificate of quality issued under the regulations in this part; or the use of any official grading stamp, tag, seal, mark, or approved label, or any wilful violation of the regulations in this part or of the supplementary rules and instructions issued by the Chief of the Bureau, may be deemed sufficient cause for debarring such persons from any benefits of the Act, and in case of violation of the Food and Drugs Act of June 30, 1906 (34 Stat. 768; 21 U.S.C. Chapter 1), may subject the shipper to prosecution and the product shipped to seizure.* [Reg. 10, sec. 1]

PUBLICATIONS

55.32 Publication media. Publications under the Act and the regulations in this part shall be made in service and regulatory announcements of the Bureau of Agricultural Economics and such other mediums as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 11, sec. 1]

OFFICIAL SAMPLES

55.33 Taking official samples. At points where official graders of butter, cheese, eggs, dressed poultry and/or dressed domestic rabbits are not available, official samples may be taken of the product of which a grading is desired and an official sampler's certificate issued. The official sampler shall take official samples in accordance with the regulations in this part and such supplementary instructions as may be issued by the Chief of the Bureau and shall forward the samples under seal to a grading office for grading.* [Reg. 12, sec. 1, SRA, BAE 137, as added May 26, 1933]

55.34 Designated samplers. Any qualified employee of the United States Department of Agriculture may be designated to act as an official sampler in accordance with §§ 55.33–55.40.* [Reg. 12, sec. 2, SRA, BAE 137, as added May 26, 1933]

55.35 Licensed samplers. Persons, not employed by the United States Department of Agriculture, but showing proper qualifications, may be licensed by the Secretary of Agriculture as official samplers of butter, cheese, eggs, dressed poultry and/or dressed domestic rabbits which may be graded under the Act: provided, no sampler shall take an official sample from any lot in which he or his employer is financially interested. All such licenses shall be countersigned by the specialist in charge of the Division of Dairy and Poultry Products in the Bureau, the specialist in grading in that Division, or by the supervisor under whose direction the licensee is to work.* [Reg. 12, sec. 3, SRA, BAE 137, as added May 26, 1933]

55.36 Compensation of licensed samplers. Samplers who are not employees of the United States Department of Agriculture or

of an agency co-operating in the conduct of this grading service may receive and retain as compensation for their services the fee charged for officially sampling the lot of product to be graded.* [Reg. 12, sec. 4, SRA, BAE 137, as added May 26, 1933]

55.37 Official sampling fees. The fees for taking an official sample of any lot of butter, cheese, eggs, dressed poultry and/or dressed domestic rabbits unless otherwise approved by the Chief of the Bureau shall be 40 percent of the fees for grading the lot as provided in § 55.29 (a), (b), (c), (d) : Provided, That when the sampling is done under a cooperative agreement with a State or other agency, the fees and charges to be collected shall be those provided for under the agreement.* [Reg. 12, sec. 5, SRA, BAE 137, as added May 26, 1933]

55.38 Disposition of fees for sampling. Fees that are due the Department of Agriculture for official sampling shall be remitted promptly to the disbursing clerk of the Department of Agriculture.* [Reg. 12, sec. 6, SRA, BAE 137, as added May 26, 1933]

55.39 Fees for grading official samples. The fees charged for grading the official samples shall be based on the actual time required at the rate of \$2.00 per hour with a minimum charge of \$1.00 for any sample: Provided, That when the grading is made under a cooperative agreement with a State or other agency, the fees and charges to be collected shall be those provided for under the agreement.* [Reg. 12, sec. 7, SRA, BAE 137, as added May 26, 1933]

55.40 Disposition of official samples. The official samples, after grading, will be returned to the applicant at his expense or be disposed of as he may direct; otherwise, the samples will be disposed of in such manner as the Chief of Bureau may direct.* [Reg. 12, sec. 8, SRA, BAE 137, as added May 26, 1933]

PART 56—DRESSED POULTRY AND DRESSED DOMESTIC RABBITS AND EDIBLE PRODUCTS THEREOF (INSPECTION AND CERTIFICATION FOR CONDITION)

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CROSS REFERENCE

Bureau of Animal Industry, Department of Agriculture: See Animals and Animal Products, 9 CFR Chapter I.

DEFINITIONS

Section 56.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.* † [Reg. 1, sec. 1]

*§§ 56.1 to 56.56, inclusive, issued under the authority contained in 50 Stat. 425 ; 7 U.S.C., Sup., 414.

†The source of §§ 56.1 to 56.56, inclusive, is Rules and regulations of the Secretary of Agriculture governing the inspection and certification of dressed poultry and dressed domestic rabbits for external condition and of dressed poultry and dressed domestic rabbits and edible products thereof for condition and wholesomeness, Aug. 17, 1937, 2 F.R. 1417. (SRA, BAE 131)

56.2 Terms defined. For the purpose of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean :

(a) **The Act.** The following provisions of an Act of Congress entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1938", approved June 29, 1937 (50 Stat. 425 ; 7 U.S.C., Sup., 414) :

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and condition of cotton, tobacco, fruits and vegetables, whether raw, dried or canned, poultry, butter, hay, and other perishable farm products, when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as

he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) Secretary. Secretary or Acting Secretary of Agriculture of the United States.

(c) Bureau. Bureau of Agricultural Economics of the United States Department of Agriculture.

(d) Person. Individual, association, partnership, or corporation.

(e) Inspector. Employee of the Department of Agriculture or other person authorized by the Secretary to investigate and certify to shippers and other interested parties the external condition, and condition and wholesomeness of products under the Act. Inspections for "condition and wholesomeness" involving evisceration, shall be made by an inspector who is a qualified veterinarian.

(f) Products. Dressed poultry, dressed domestic rabbits, and carcasses, byproducts, and food products thereof.

(g) Dressed poultry. Domestic poultry slaughtered for human food with heads, feet, and viscera intact, and the feathers removed in accordance with commercial practice.

(h) Poultry carcass. All edible parts of dressed poultry exclusive of byproducts.

(i) Poultry byproducts. All edible viscera and parts of dressed poultry other than poultry meat.

(j) Poultry food products. Any articles of food or any articles which enter into the composition of food which are not prepared poultry carcasses or poultry byproducts but which are derived or prepared in whole or in part by a process of manufacture from any edible portion of dressed poultry, if such manufactured portion is all or a considerable and definite portion of the article.

(k) Dressed domestic rabbits. Domestic rabbits slaughtered for human food with heads, feet, and viscera intact.

(l) Domestic rabbit carcass. All edible parts of dressed domestic rabbits exclusive of byproducts.

(m) Domestic rabbit byproducts. All edible viscera and parts of dressed domestic rabbits other than rabbit meat.

(n) Domestic rabbit food products. Any articles of food or any articles which enter into the composition of food which are not prepared domestic rabbit carcasses or domestic rabbit byproducts, but which are derived or prepared in whole or in part by a process of manufacture from any edible portion of dressed domestic rabbit, if such manufactured portion is all or a considerable and definite portion of the article.

(o) Office of inspection. The office of an inspector of products covered by the regulations in this part.

(p) Inspection certificate. Certificate of the external condition or of the condition and wholesomeness of products issued by an inspector under the Act.

(q) Regulations. Rules and regulations of the Secretary under the Act.

(r) **Approved premises.** Any plant at which inspection is carried on regularly under the regulations in this part.

(s) **“Inspected for external condition.”** That the dressed poultry and dressed domestic rabbits have been examined in an uneviscerated state to determine their condition and that only external evidences of condition have been given consideration.

(t) **“Inspected for condition and wholesomeness.”** That the dressed poultry and dressed domestic rabbits and edible products thereof have been examined to determine their soundness, wholesomeness, and freedom from disease and that the poultry and domestic rabbits have been eviscerated and both external and internal evidences of condition and wholesomeness have been given consideration, or that drawn poultry and drawn domestic rabbits and edible products thereof previously inspected and certified for condition and wholesomeness at the time of evisceration, and which have not lost their identity as inspected and certified poultry or domestic rabbits, have been examined to determine their soundness and wholesomeness.

(u) **“Inspected and certified by Bureau of Agricultural Economics, United States Department of Agriculture.”** That the products have been inspected for condition and wholesomeness and certified under the regulations in this part and that at the time they were inspected and certified they were found to be sound, wholesome, and fit for human food.

(v) **“Inspected and rejected by Bureau of Agricultural Economics, United States Department of Agriculture.”** That the products so indicated are unsound, unhealthful, unwholesome, or otherwise unfit for human food.

(w) **“Held for further examination by Bureau of Agricultural Economics, United States Department of Agriculture.”** That the product so indicated are held for further examination by an inspector to determine their disposal.

(x) **Inspection mark.** A mark or statement authorized by the regulation in this part for use in connection with products, or on the container of such indicating that the articles have been “inspected and certified.”

(y) **Immediate container.** A unit can, pot, tin, or other receptacle or covering in which any edible portion of dressed poultry or dressed domestic rabbit is customarily delivered to consumers.

(z) **Shipping container.** The box, bag, barrel, crate, or other receptacle or covering inclosing any edible portion of dressed poultry and dressed domestic rabbits, packed in two or more immediate containers.*† [Reg. 1, sec. 2]

ADMINISTRATION

56.3 Chief of Bureau. The Chief of Bureau is charged with the administration of the provisions of the act and the regulations in this part.*† [Reg. 2, sec. 1]

WHERE SERVICE IS OFFERED

56.4 Inspection; where made. Products may be inspected wherever an inspector is available and facilities and conditions are satisfactory for the conduct of the work.*† [Reg. 3, sec. 1]

INSPECTION SERVICE

56.5 Kind of service. Inspection of products may be made for external condition, and for condition and wholesomeness.*† [Reg. 4, sec. 1]

56.6 Who may obtain service. An application for inspection may be made by any financially interested person or his authorized agent, including Federal, State, county, and municipal governments and common carriers.*† [Reg. 4, sec. 2]

56.7 How to make application. Application for inspection may be filed in the office of inspection or with any authorized inspector at or nearest the place where the inspection is desired. If made orally, the inspector may require that the application be confirmed in writing. When the inspection involves evisceration of drawn poultry and drawn domestic rabbits and edible products thereof, application in writing must be filed with the Chief of Bureau.*† [Reg. 4, sec. 3]

56.8 Form of application. Each application for inspection of products under regulations when required to be in writing, should include such information in regard to the article and to the premises where they are to be inspected as the inspector or the Bureau may require.*† [Reg. 4, sec. 4]

56.9 When application may be rejected. Any application may be rejected by the inspector in charge of the office of inspection in which it is filed for any noncompliance with the Act or any regulation thereunder and the applicant shall be immediately notified of the reasons for such rejection.*† [Reg. 4, sec. 5]

56.10 When application may be withdrawn. An application may be withdrawn at any time before the service is performed upon payment of any expenses incurred in connection therewith.*† [Reg. 4, sec. 6]

56.11 Authority of agent. Proof of the authority of any person applying for inspection on behalf of another may be required in the discretion of the inspector.*† [Reg. 4, sec. 7]

56.12 Granting of application. Applications for inspection involving evisceration or for inspection of drawn poultry and drawn domestic rabbits and edible products thereof which have been previously inspected and certified shall be granted only when the facilities available and the methods employed are suitable and adequate, as determined by the inspector or the Chief of Bureau.*† [Reg. 4, sec. 8]

56.13 Accessibility of product. The applicant shall cause the product for which inspection is requested to be made accessible for inspection and to be so placed as to disclose fully its condition.*† [Reg. 4, sec. 9]

*†For statutory and source citations, see note to § 56.1.

56.14 Basis of inspection. Inspection of products shall be made under such conditions and in accordance with such methods as may be prescribed or approved by the Bureau.*† [Reg. 4, sec. 10]

56.15 Financial interest of inspector. No inspector shall inspect any product in which he is directly or indirectly financially interested.*† [Reg. 4, sec. 11]

56.16 Uninspected drawn poultry or domestic rabbits may not be handled. When a plant has been granted service in the inspection of product for condition and wholesomeness, no uninspected poultry or domestic rabbits shall be drawn in the plant. Commercially dressed, undrawn poultry may, however, be handled in such a plant.*† [Reg. 4, sec. 12]

56.17 Sanitary requirements. Inspection of product for condition and wholesomeness shall be made only on premises which maintain such sanitary conditions as the Bureau may require.*† [Reg. 4, sec. 13]

56.18 Report of violations. Inspectors shall report to the Bureau all violations and noncompliances under the regulations in this part of which they have knowledge.*† [Reg. 4, sec. 14]

56.19 Plant shall report time of operation. The inspector or other authorized agent of the Bureau shall be informed when work in the Department of any approved premises where products are inspected or handled, has been concluded for the day and a reasonable time in advance of the day and hour when such work will be resumed.*† [Reg. 4, sec. 15]

56.20 Meat inspection regulations applicable. All provisions of the regulations of the United States Department of Agriculture governing the meat inspection of the Department (no BAI regulations regarding poultry) relating to post-mortem inspection which are applicable to poultry or to domestic rabbits shall be enforced in connection with the inspection of dressed poultry and dressed domestic rabbits and edible products thereof for condition and wholesomeness.*† [Reg. 4, sec. 16]

CROSS REFERENCES: For meat inspection regulations, see Animals and Animal Products, 9 CFR Parts 1-29; post-mortem inspection, see Part 10.

56.21 Evisceration. Where inspections involve evisceration, each carcass, after being thoroughly thawed, if frozen, shall be opened in such a way as to expose the organs and the body cavities in order to allow proper examination of each part by the inspector. When inspection involving evisceration and examination for soundness, wholesomeness, and freedom from disease is made, each carcass with head, feet, and all viscera intact shall be examined by the inspector: Provided, however, That if the feet and shanks of poultry are not to be used in the preparation of any edible product they may be removed at or below the hock joint prior to inspection.*† [Reg. 4, sec. 17]

56.22 Carcasses held for further examination. Each carcass, including all parts and organs thereof, in which any lesion or disease or other condition is found which might render the poultry or

domestic rabbit meat or any organ unfit for food, and on which final decision cannot be made on first examination, shall be held for further examination by the inspector. The identity of every such carcass, part, or organ thereof shall be maintained until its final examination has been completed and it is either "inspected and certified" or "inspected and rejected."*† [Reg. 4, sec. 18]

56.23 Identification labels. Such labels, devices, and methods as may be approved by the Bureau may be used for the identification of carcasses, parts, or organs held for further examination.*† [Reg. 4, sec. 19]

56.24 Unsound carcasses; disposition. Each carcass, including all parts and organs thereof, which is found to be unsound, unwholesome, or otherwise unfit for human food shall be destroyed for human food and shall receive such treatment as will preclude dissemination of disease through consumption by other animals under the supervision of the inspector or other authorized agent of the Bureau.*† [Reg. 4, sec. 20]

56.25 Sound carcasses; disposition. Carcasses and all parts and organs thereof found to be sound, healthful, wholesome, and fit for human food shall be certified as provided in the regulations in this part.*† [Reg. 4, sec. 21]

56.26 Certificates; form. The inspection certificate shall be issued on forms approved by the Chief of Bureau. It shall show the class or classes of poultry or domestic rabbits, the quantity of each, and all pertinent information concerning the condition and wholesomeness of each separate lot examined. The certificate shall also plainly show whether (a) the inspection was for external condition without evisceration, or (b) whether it was for condition and wholesomeness and involved evisceration, or (c) whether it was for condition and wholesomeness subsequent to evisceration, and (d) such other information as may be required by the Bureau.*† [Reg. 4, sec. 22]

56.27 Certificates; issuance. The inspector shall issue a separate certificate for each lot of products inspected by him, except that certificates need not be issued covering drawn poultry or drawn domestic rabbits and edible products thereof which have been previously inspected and certified and the identity of which has not been lost, but such reports covering their inspection shall be rendered as may be required by the Bureau.*† [Reg. 4, sec. 23]

56.28 Certificates; disposition. One original inspection certificate, and not to exceed two copies if requested, shall immediately upon issuance be delivered or mailed to the applicant or person designated by him. One copy shall be filed in the office of inspection, and one copy forwarded to the Bureau. They shall be kept on file until other disposal is ordered by the Bureau.*† [Reg. 4, sec. 24]

56.29 Reports of work. Reports of the work of inspection carried on within approved premises shall be forwarded to the Bureau by the inspector on such blanks and in such manner as may be specified by the Bureau.*† [Reg. 4, sec. 25]

*†For statutory and source citations, see note to § 56.1.

56.30 Information to be furnished to inspector. When inspections are made within approved premises the inspectors and other authorized agents of the Bureau engaged in the conduct of this work shall be furnished with accurate information as to all matters needed by them for making their reports.*† [Reg. 4, sec. 26]

56.31 Marking of containers for export. Each outside container of any inspected and certified products for export shall be plainly marked in such a way as to properly identify it.*† [Reg. 4, sec. 27]

56.32 Export certificates; form. Export certificates may be in the form required by each particular country and approved by the Chief of Bureau, and shall be signed by the inspector who inspected the products or by the supervising inspector and by any authorized agent of the Bureau who supervised the canning or other preparation of the inspected articles and the labeling of the containers. Export certificates shall be issued in serial numbers and in quadruplicate, with memorandum copy for filing. Each certificate shall show the names of the exporter and the consignee, the destination, the numbers of the stamps, if any, attached to the articles to be exported, the shipping marks, the kind of product, and the weight.*† [Reg. 4, sec. 28]

56.33 Export certificates; issuance. An application of the exporter the inspector is authorized to issue export certificates for shipments of inspected and certified products to any foreign country; Provided, however, That where products have been previously inspected and certified by the Bureau and properly marked as such and have later been moved to some other location than the point where they were so inspected, certified, and prepared, an export certificate covering such products may be issued on application of the person in whose possession they are at that time after suitable examination has been made by an inspector or authorized agent of the Bureau who may sign such export certificate.*† [Reg. 4, sec. 29]

56.34 Export certificate; disposition. The original export certificate shall be delivered to the shipper and shall be used only for the purpose of effecting the transportation and delivery of the consignment. The duplicate of the export certificate shall be delivered to the shipper and by him delivered to the agent of the railroad or other carrier which transports the consignment from the United States. The triplicate of the export certificate shall be retained by the inspector issuing the same and be forwarded to the Bureau for filing, and the quadruplicate filed in the office of inspection. The memorandum copy shall be delivered to the shipper for filing.*† [Reg. 4, sec. 30]

56.35 Advance information. Upon request of an applicant, all or any part of the contents of an inspection certificate issued on a lot of products may be telephoned or telegraphed to him at his expense.*† [Reg. 4, sec. 31]

APPEAL INSPECTION

56.36 When appeal may be taken. An application for appeal inspection may be made whenever any financially interested party is dissatisfied with the determination stated in the original certificate,

provided the application is made within the same business day and before the identity of the original lot of products inspected has been lost.*† [Reg. 5, sec. 1]

56.37 Appeal inspection; how to obtain. Application for appeal inspection may be made in writing, orally, by telephone, telegraph, or otherwise. If made orally the person receiving the application may require that it be confirmed in writing. Such application shall give the reasons therefor, and the inspection certificate previously issued on the lot, if a certificate has been issued, shall be returned to the person making the appeal inspection if it is in the possession of the applicant.*† [Reg. 5, sec. 2]

56.38 Record of filing time. A record showing the date and time of filing such application shall be made by the inspector.*† [Reg. 5, sec. 3]

56.39 When appeal may be refused. If it shall appear that the reasons stated in the application for appeal inspection are frivolous or unsubstantial, or that the quality or condition of the products has undergone a material change since the original inspection or that the products cannot be made accessible for thorough inspection, or that the identity has been lost, or the regulations in this part have not been complied with, the application may be rejected.*† [Reg. 5, sec. 4]

56.40 When appeal may be withdrawn. An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is made, upon payment of any expenses incurred in connection therewith.*† [Reg. 5, sec. 5]

56.41 Order in which made. Appeal inspections shall be performed, as far as practicable, at time requested by applicant and in the order in which applications are received. They shall take precedence over all other pending applications.*† [Reg. 5, sec. 6]

56.42 Who shall pass upon appeals. Applications for appeal inspection shall be passed upon by persons designated for the purpose by the Chief of Bureau. Appeal inspection shall be made by the inspectors especially designated therefor by the supervising inspector and such inspection shall be conducted jointly by two inspectors when practicable. No appeal inspector shall pass upon an appeal involving the correctness of a certificate issued by him unless he is so authorized by the Chief of Bureau or by persons designated for the purpose by the Chief of Bureau.*† [Reg. 5, sec. 7]

56.43 Appeal findings. After an appeal inspection has been made a certificate designated as "Appeal Inspection Certificate" shall be signed and issued referring specifically to the original certificate and stating the condition of the product, as shown by the appeal inspection. In all other respects the provisions of §§ 56.5–56.35 shall apply to such appeal inspection certificate except that if the applicant for appeal inspection be not the original applicant a copy of the appeal inspection certificate shall be mailed to the original applicant.*† [Reg. 5, sec. 8]

56.44 Extension of time. Upon satisfactory showing of evidence of fraud, or that on account of distance the time of filing an

*†For statutory and source citations, see note to § 56.1.

application for appeal inspection is insufficient, or other good cause, the person to whom the application for appeal inspection is made may permit the filing of such application after the time prescribed therefor in the regulations in this part, and a statement of such action shall be included in the record of such appeal inspection by the official making the same.*† [Reg. 5, sec. 9]

56.45 Superseded certificates. When an inspection certificate shall have been superseded under the regulations in this part by an appeal inspection certificate, such inspection certificates shall become null and void, and shall not thereafter represent the condition and wholesomeness of the products described therein. If the original and all copies of the superseded certificates are not delivered to the person with whom the application for appeal inspection is filed, the officer issuing the appeal inspection certificate shall forward notice of such issuance and of the cancelation of the original certificate to such persons as he considers necessary to prevent fraudulent use of the canceled certificate.*† [Reg. 5, sec. 10]

MARKING, BRANDING, AND IDENTIFYING PRODUCTS

56.46 Inspection mark—(a) Wording. The inspection mark permitted to be used on products inspected for condition and wholesomeness under this part shall be “inspected and certified by the Bureau of Agricultural Economics, U. S. Department of Agriculture.” The Bureau may approve and authorize the use of abbreviations of the inspection mark under the regulations in this part. Such abbreviations shall have the same force and effect as the mark for which they are so authorized to be used.

(b) Affixing; supervision. No person shall affix or place or cause to be affixed or placed the inspection mark or any abbreviation, copy, or representation thereof to any products except under the supervision of an inspector or other authorized agent of the Bureau.

(c) Filling of container. No person shall fill or cause to be filled, in whole or in part, with any products any container bearing or intended to bear the inspection mark or any abbreviation, copy, or representation thereof except under the supervision of an inspector or other authorized agent of the Bureau.

(d) Affixing inspection mark to container. No person shall affix or place or cause to be affixed or placed the inspection mark or any abbreviation, copy of representation thereof to or on a container of any products except under the supervision of an inspector or other authorized agent of the Bureau.*† [Reg. 6, sec. 1]

56.47 Trade labels—(a) Attaching to container. When any inspected and certified products are placed or packed within approved premises in any can, pot, tin, or other receptacle constituting an immediate container within the meaning of the regulations in this part which is to bear the inspection mark there shall be attached to such container a trade label, as hereinafter described, which shall be distinctive from trade labels used on the same or similar products prepared from noninspected poultry or domestic rabbits: Provided,

however, That inspected and certified products may be placed or packed in immediate containers which do not and are not to bear trade labels on which the inspection mark appears, but they shall not be represented, advertised, or labeled, either directly or indirectly, as products which have been inspected and certified under the regulations in this part.

(b) Filling of labeled container. No container which bears or is to bear a trade label on which the inspection mark appears shall be filled in whole or in part with any products which have not been inspected and certified in compliance with the regulations in this part and which are not sound, wholesome, and fit for human food and strictly in accordance with the statements on the label. No such container shall be filled in whole or in part and no trade label shall be affixed except under the supervision of an inspector or other authorized agent of the Bureau.

(c) Wording on labels. Trade labels approved by the Bureau shall bear the true name of the article in the container and shall bear in prominent letters and figures of uniform size the phrase, "Inspected and Certified by Bureau of Agricultural Economics, U. S. Department of Agriculture," and also the number, if any, of the approved premises within which the products were inspected when the approved trade label does not bear the name of the firm packing the product and identify the plant in which the product was packed: Provided, however, That the plant number of the approved premises may be embossed on the immediate container instead of being printed on the trade label, if the embossing is approved by the Bureau.

(d) Approval of labels. No trade label bearing the inspection mark shall be printed for use until printer's final proof has been approved by the Bureau.

(e) Formulae required. Printer's proof of all trade labels bearing the inspection mark which are submitted for approval shall, when the Bureau requires, be accompanied by a statement showing the kinds and percentages of the ingredients of the product in any container on which it is desired to use the label. Approximate percentages may be given in cases where the percentages of ingredients may vary from time to time, if the limits of variations are stated.

(f) Use of approved labels. Approved trade labels shall be used only on products for which they are approved. They shall not be applied to any products the container of which bears any statement that is false or misleading.

(g) Labels in foreign languages. Approved trade labels to be affixed to packages of any products for foreign commerce may be printed in a foreign language. The inspection mark shall appear thereon in English, but, in addition, may appear, literally translated, in foreign languages.*† [Reg. 6, sec. 2]

LICENSED INSPECTORS

56.48 Who may be licensed. Persons showing proper qualifications may be licensed by the Secretary as inspectors of products

*†For statutory and source citations, see note to § 56.1.

which may be inspected under this Act, Provided That only qualified veterinarians may make inspections involving evisceration of dressed poultry and dressed domestic rabbits and edible products thereof for condition and wholesomeness. All such licenses shall be countersigned by the specialist in charge of the Division of Dairy and Poultry Products in the Bureau, or the specialist in poultry and domestic rabbit inspection in that Division, or by the supervising inspector under whose direction the licensee is to make inspections.*† [Reg. 7, sec. 1.]

56.49 Suspension of licenses. Any such license may be suspended, pending final action by the Secretary, by an official by whom it may be countersigned or by the Chief of Bureau whenever such official shall deem such action to be for the good of the service. Within seven days after such suspension the licensee may file an appeal in writing to the Secretary, supported by any argument or evidence that he may wish to offer in his behalf.*† [Reg. 7, sec. 2.]

CHARGES FOR INSPECTION SERVICE

56.50 Fees and expenses—(a) Basis for charges. Fees to be collected for inspection services shall be based upon the time required to render the services, including the time required for travel of inspector in connection therewith, at the rate of \$2 per hour for each inspector for the time actually required, unless otherwise provided by special agreement with the applicant approved by the Bureau.

(b) Inspectors employed or licensed by Department of Agriculture. Charges for services by employees of the Department and by inspectors licensed by the Secretary shall be at rates established herein, or those provided in the terms of his contract of employment.

(c) Under cooperative agreement. Charges for inspection under cooperative agreements shall be those provided for by such agreements.

(d) For appeal inspection. Fees for appeal inspections shall be double those for original inspections, except that no fee will be charged when it is found that there was a material error in the determination based upon the original inspection, and except that appeal grading for Federal Government agencies shall be at actual cost.

(e) Traveling expenses. Such further charges may be made for traveling expenses and other items paid or incurred by the Bureau in connection with an inspection made at a place where no inspector is located, or appeal inspection where the services of a second inspector are required, as will reimburse the Bureau. These charges shall be included with the fee for inspection on the bill furnished the applicant.

(f) For copies of inspection certificates. For not to exceed three extra copies of a certificate to any person financially interested in a product involved, the fee shall be \$1.*† [Reg. 8, sec. 1]

56.51 How fees shall be paid. Fees shall be paid by the applicant in accordance with the directions on the fee bill furnished him by the inspector, and in advance if required by the inspector.*† [Reg. 8, sec. 2]

56.52 Disposition of fees. (a) Fees for inspections made by salaried inspectors acting exclusively for the Bureau shall be promptly remitted to the Bureau.

(b) Fees for inspections made by a licensed inspector acting exclusively for the Bureau, less the percentage thereof which he is allowed by the terms of his contract of employment as compensation for his services, shall be remitted to the Bureau.

(c) Fees for inspections made by an inspector acting under a cooperative agreement with a State or other organization shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted to the Bureau.*† [Reg. 8, sec. 3]

MISCELLANEOUS

56.53 Fraud or misrepresentation. Any wilful misrepresentation or any deceptive or fraudulent practice made or committed by any person in connection with the making or filing of an application; the use of an inspection or appeal inspection certificate issued under the regulations in this part, or the use of any official stamp, tag, seal, mark, or approved label, or any wilful violation of the regulations in this part or of the supplementary rules and instructions issued by the Chief of Bureau, may be deemed sufficient cause for debarring such persons from any benefits of the Act.*† [Reg. 9, sec. 1]

56.54 Publication. Publication under the Act and the regulations in this part shall be made in service and regulatory announcements of the Bureau and such other media as the Chief of Bureau may from time to time designate for the purpose.*† [Reg. 9, sec. 2]

56.55 Political activity. All inspectors authorized, either by appointment or license from the Secretary, to issue inspection certificates under the Act and the regulations in this part are forbidden, during the period of their appointment or license, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including temporary and cooperative employees, and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for dismissal in the case of appointees, and revocation of licenses in the case of licensees.*† [Reg. 9, sec. 3]

56.56 Identification. All inspectors shall have in their possession at all times Department identification cards, and shall identify themselves by such cards on request.*† [Reg. 9, sec. 4]

*†For statutory and source citations, see note to § 56.1.

PART 57—HAY AND STRAW (INSPECTION AND CERTIFICATION FOR CLASS AND CONDITION)

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DEFINITIONS

Section 57.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 57.1 to 57.40, inclusive, issued under the authority contained in 49 Stat. 275; 7 U.S.C., Sup., 414.

†The source of §§ 57.1 to 57.40, inclusive, is Rules and regulations of the Secretary of Agriculture governing the inspection and certification of hay and straw for class and grade, Dec. 13, 1935.

57.2 Terms defined. For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) **The Act.** The following provisions of an Act of Congress entitled "An Act making appropriations for the Department of Agriculture and for the Farm Credit Administration for the fiscal year ending June 30, 1936 and for other purposes", approved May 17, 1935 (49 Stat. 275; 7 U.S.C., Sup., 414):

For enabling the Secretary of Agriculture, independently or in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and

condition of cotton, tobacco, fruit, and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) **Secretary.** Secretary of Agriculture of the United States.

(c) **Bureau.** Bureau of Agricultural Economics of the United States Department of Agriculture.

(d) **Person.** Individual, association, partnership, or corporation.

(e) **Inspector.** Employee of the Department of Agriculture authorized by the Secretary, or other person licensed by him in accordance with the regulations in this part to investigate and certify to shippers and other interested parties the class and grade of hay under the Act.

(f) **Hay.** Hay shall include hay and straw as defined in the Official United States Standards for Hay and Straw and in addition thereto shall include other types of hay and straw, corn fodder, corn stover, and other similar roughages, whether whole, chopped or shredded.

(g) **Office of inspection.** The office of an inspector of hay.

(h) **Inspection certificate.** Certificate of the class and grade of hay issued by an inspector under the Act.

(i) **Interested party.** Any person who has a financial interest in the hay involved, including all carriers and warehouses who have handled or will handle the hay, the present owner or any person who owned the hay prior to him, and persons to whom the hay has been sold and whose acceptance of the hay depends on the inspection, but not including persons who merely are negotiating for its purchase.

(j) **Regulations.** Rules and regulations of the Secretary under the Act.

(k) **Class** is the formal expression indicating the kind or a mixture of various kinds of hay.

(l) **Grade** is the formal expression of the quality and condition of the hay.

(m) **Form.** Hay is inspected as: Baled Hay. Hay which has been pressed into bales with presses such as those which are known commonly as perpetual and box presses; Double compressed hay. Hay which has been pressed into bales with what are known commonly as double compression balers; Loose hay. Hay which has not been baled or double compressed.

(n) **Lot.** A quantity of hay considered as a unit for inspection or other purpose, such as carlot, truck lot, warehouse lot, etc.*† [Reg. 1, sec. 2]

ADMINISTRATION

57.3 Chief of Bureau. The Chief of the Bureau is charged with the administration of the provisions of the Act and the regulations in this part.*† [Reg. 2, sec. 1]

*†For statutory and source citations, see note to § 57.1.

WHERE INSPECTION SERVICE IS OFFERED

57.4 Where service is offered. Inspections may be made for the purpose of the Act wherever hay is offered for interstate shipment, including farms, warehouses, elevators, loading platforms, wagons, trucks, railroad cars, boats, barges, and vessels at designated important central markets wherever inspectors are available, and at nearby points accessible to such inspectors under conditions outlined in paragraphs (a), (b), and (c).

(a) Shipping points. Inspection is available at shipping points where the Bureau has entered into cooperative agreement with a State or other organization for the employment and licensing of inspectors under the Act.

(b) Designated markets. Inspection may be obtained at any of the following markets or at any other markets wherever inspectors are available:

Albany, N. Y.
Atlanta, Ga.
Birmingham, Ala.
Boston, Mass.
Chicago, Ill.
Denver, Colo.
Fort Worth, Tex.
Houston, Tex.
Kansas City, Mo.
Los Angeles, Calif.
Memphis, Tenn.
Norfolk, Va.

Oklahoma City, Okla.
Philadelphia, Pa.
Phoenix, Ariz.
Portland, Oreg.
Reno, Nev.
Sacramento, Calif.
San Antonio, Tex.
San Francisco, Calif.
Seattle, Wash.
Spokane, Wash.
Tacoma, Wash.
Washington, D. C.

(c) Other points. Inspection may be made at any point near a designated market under conditions stated in § 57.33 (e), to the extent permitted by the time of the inspector.*† [Reg. 3, sec. 1]

INSPECTION SERVICE

57.5 Kind of service. There are three kinds of inspection service, complete, partial, and sample, which are described in paragraphs (a), (b), and (c) of this section.

(a) Complete inspection. (1) A complete inspection may be made of either baled hay or double compressed hay. A complete inspection of baled hay is a thorough examination by an inspector, either (i) of each bale of hay in the lot, or (ii) of a sufficient portion of the lot to permit the class and grade of the entire lot to be determined, under conditions prescribed by the Chief of the Bureau in effect at the time of making the inspection. The grade of an entire lot of hay shall be the grade established only by complete inspection.

(2) A complete inspection of double compressed hay is a thorough examination for class and grade by an inspector of the hay compressed into each bale of the lot at the time of compression. The inspector shall cause to be attached to the wires of each bale inspected a tag which shall have stated plainly thereon (i) the words "Federal Hay Inspection", (ii) the certificate number, (iii) the date of inspection, and (iv) the inspector's name and address, except that such tags need not be attached if the lot is all of the same class and grade and

is loaded into one car or vessel in such a manner that the lot can be identified therein. When an artificial mixture of hay made in double compressing is graded, the inspection shall state the class as determined by the components of the mixture and the grade as the lowest grade of any of the component parts of the mixture.

(b) Partial inspection. A partial inspection may be made of baled or loose hay and is an examination for class and grade by an inspector of the visible part of the lot of hay. A partial inspection of baled hay shall not be made when a sufficient portion of the hay can be examined at the time of inspection to permit the inspector to make a complete inspection in accordance with paragraph (a) of this section. In the case of a partial inspection the grade assigned shall apply only to that part of the lot seen by the inspector.

(c) Sample inspection. A sample inspection may be made of baled or loose hay and is a thorough examination for class and grade by an inspector of a bale or other portion of hay weighing not less than ten pounds. Such portion shall be in such physical condition as to permit the accurate determination of all factors affecting its class and grade.*† [Reg. 4, sec. 1]

57.6 Who may obtain service. Application for inspection of hay under the Act may be made by a State or by any financially interested party, or by any authorized persons in behalf of such applicant.*† [Reg. 4, sec. 2]

57.7 How to make application. Application for inspection of hay under the Act may be filed in the office of inspection or with an inspector. It may be made in writing, or orally, by telegraph or telephone. If made orally, the inspector may require that it be confirmed in writing.*† [Reg. 4, sec. 3]

57.8 Form of application. The written application for inspection of hay under the Act shall include: (a) the date of application; (b) the identification and location of the hay; (c) the name and post-office address of the applicant and of the person, if any, making the application in his behalf; (d) the interest of the applicant (except the State) therein; (e) the kind of inspection desired; (f) whether the hay has been inspected previously, and if so the facts relating to such inspection; (g) such other information as may be required by the Chief of the Bureau.*† [Reg. 4, sec. 4]

57.9 When application deemed filed. An application shall be deemed filed when delivered to an office of inspection. Record showing date and time of filing shall be made in such office.*† [Reg. 4, sec. 5]

57.10 When an application may be rejected An application may be rejected by the inspector with whom it is filed for any non-compliance with the Act or the regulations in this part, and such inspector shall immediately notify the applicant of the reasons for such rejection. All expenses incurred in connection therewith shall be paid by the applicant.*† [Reg. 4, sec. 6]

57.11 When an application may be withdrawn. An application may be withdrawn by the applicant at any time before the inspector

*†For statutory and source citations, see note to § 57.1.

has examined the lot of hay, upon payment of any expenses incurred in connection therewith as provided in § 57.33 (e).*† [Reg. 4, sec. 7]

57.12 Authority of agent. Proof of authority of any person applying for inspection on behalf of another may be required, in the discretion of the inspector.*† [Reg. 4, sec. 8]

57.13 Accessibility of product. The applicant shall cause the hay for which inspection or appeal inspection is requested to be made accessible for examination and to be so placed as to disclose its class and grade. This includes opening of a limited number of bales if the inspector considers this to be necessary.*† [Reg. 4, sec. 9]

57.14 Basis of service. Class and grade shall be based on United States standards when inspecting hay to which such standards apply. Hay for which there are no United States standards may be graded under any standards the applicant desires used and which the inspector can interpret, or the class, quality and condition of the hay may be described without reference to any standards.*† [Reg. 4, sec. 10]

57.15 Order of inspections. The inspector shall comply with as many applications for inspection as facilities will permit and so far as practicable in the order in which applications are received, except that appeal inspections shall take precedence over other inspection.*† [Reg. 4, sec. 11]

57.16 Certificates; issuance. Inspectors shall sign and issue inspection certificates for hay inspected by them in accordance with paragraphs (a), (b), and (c) of this section.

(a) **Certificates for baled or loose hay.** A certificate shall be issued for each lot of baled or loose hay inspected.

(b) **Certificates for double compressed hay.** A separate certificate shall be issued for each portion of a lot of double compressed hay of the same class and grade. Each such certificate shall state the number of bales in the lot and that the hay is double compressed. No inspection certificate for double compressed hay shall cover hay of more than one class and grade.

(c) **Divided-lot certificates for double compressed hay.** Certificates issued in accordance with paragraph (b) of this section for double compressed hay, tagged in accordance with § 57.5 (a) or divided-lot certificates issued in accordance with this paragraph will be exchanged by an inspector at any time after their issuance for two or more divided-lot certificates covering divided parts of the lot. The amount covered by each of such divided-lot certificates shall be in accordance with the request of the applicant, provided the total of the amount covered by all such divided-lot certificates shall be equal to the amount covered by one of a given number issued in exchange for the surrendered certificate and that the United States Department of Agriculture assumes no responsibility for any change in the quality of the hay covered by this certificate after the date of the original inspection.*† [Reg. 4, sec. 12]

57.17 Form of certificates. There are three forms of hay inspection certificates, complete, partial, and sample.

(a) **Complete inspection certificate.** The complete inspection certificate for hay under the Act shall be in a form approved by the Chief of the Bureau and shall include among other things the following information for each lot inspected: (1) serial number of certificate, (2) the heading "United States Department of Agriculture, Bureau of Agricultural Economics", (3) the statement "complete inspection certificate", (4) the location of the hay at time of inspection, (5) date of inspection, (6) amount inspected, (7) identification of lot, (8) grade and class of the hay, (9) fees and charges, and (10) the signature of the inspector.

(b) **Partial inspection certificate.** The partial inspection certificate for hay under the Act shall be in a form approved by the Chief of the Bureau and shall include among other things the same information as the complete inspection certificate except that "partial" shall be substituted for "complete" in the certificate heading and in addition the portion of the lot examined by the inspector shall be stated and that the grade and class given apply only to the part seen by the inspector.

(c) **Sample inspection certificate.** The sample inspection certificate for hay under the Act shall be in a form approved by the Chief of the Bureau and shall include among other things the same information as the complete inspection certificate except that "sample" shall be substituted for "complete" in the certificate heading and in addition a statement that the grade assigned applies only to the sample.*† [Reg. 4, sec. 13]

57.18 Disposition of certificates. The original certificate and not to exceed two copies, if requested, upon issuance shall be immediately delivered or mailed to the applicant or a person designated by him. One copy shall be filed in the office of the inspector, and one copy forwarded to the Chief of the Bureau. Copies will be furnished to other financially interested parties as outlined in § 57.33 (f). Copies of certificates shall be kept on file until other disposition is ordered by the Chief of the Bureau.*† [Reg. 4, sec. 14]

57.19 Advance information. Upon request of an applicant, all or any part of the contents of the certificate may be telegraphed or telephoned to him or to any person designated by him at his expense.*† [Reg. 4, sec. 15]

APPEAL INSPECTION

57.20 When an appeal may be taken. An application for appeal inspection may be made whenever any financially interested person is dissatisfied with the determination stated in the original complete or sample certificate, provided (a) all of the hay covered by such inspection is available for an appeal inspection; (b) the hay is accessible for making an appeal inspection; (c) the hay has not left the place where the inspection was made from which the appeal is taken; (d) the condition of the hay has not undergone any material change; (e) the identity of the hay has not been lost; (f) the application is filed before the close of the second business day following the original inspection from which the appeal is requested; and (g) in case of

*†For statutory and source citations, see note to § 57.1.

double compressed hay, the appeal inspection can be made before the hay is finally compressed.*† [Reg. 5, sec. 1]

57.21 How to obtain. Application for an appeal, under the Act, from a complete inspection or sample inspection of hay may be made in writing or orally, by telegraph, telephone, or otherwise. If made orally it shall be confirmed the same day in writing. Such application shall be filed, (a) with any inspector, or (b) with the Chief of the Bureau. Such application shall state the reasons therefor and shall be accompanied by the certificate for the inspection from which the appeal is taken, if in the possession of the appellant.*† [Reg. 5, sec. 2]

57.22 Record of filing time. A record showing the date and time of filing such application shall be immediately made at the proper office.*† [Reg. 5, sec. 3]

57.23 When an appeal may be dismissed. If it shall appear that the reasons stated in an appeal are frivolous or unsubstantial, or the Act or the regulations in this part have not been complied with, the appeal may be dismissed, the appellant shall be notified by telegraph or in writing of the reason for such dismissal, a statement of such action shall be included in the record of such appeal by the officer making the same, and all expenses incurred in connection therewith shall be paid by the appellant. Upon the dismissal or withdrawal of an appeal any inspection certificate filed therewith shall be returned immediately to the person by whom filed, or delivered upon his written order.*† [Reg. 5, sec. 4]

57.24 When an appeal may be withdrawn. An appeal may be withdrawn by the appellant at any time before the appeal inspector has examined the lot of hay, upon payment of any expense incurred by the Department in connection therewith as provided in § 57.33 (e).*† [Reg. 5, sec. 5]

57.25 When second inspection is not an appeal. Inspection requested to determine the grade of the hay which may have undergone material change since the original inspection, shall not be considered appeal inspections within the meaning of §§ 57.20–57.29. Additional inspections requested for the purpose of securing up-to-date certificates, but where the applicant does not question the correctness of the original certificate covering the lot in question shall not be considered appeal inspections within the meaning of §§ 57.20–57.29.*† [Reg. 5, sec. 6]

57.26 Order in which made. Appeal inspections shall be made as nearly as practicable in the order in which applications are received, and shall take precedence over other inspections.*† [Reg. 5, sec. 7]

57.27 Who shall pass upon appeals. Appeals shall be passed upon by inspectors designated for the purpose by the Chief of the Bureau. No appeal inspector shall pass upon an application involving the correctness of a certificate issued by him.*† [Reg. 5, sec. 8]

57.28 Appeal findings. When an appeal inspection has been made an appeal inspection certificate shall be signed and issued by

the inspector making the appeal inspection. This appeal inspection certificate shall refer specifically to all previous inspections which it supersedes. Copies shall be sent to all interested parties, if known, other than the carriers, and to such of them as have been applicants for any former inspection. In all other respects the provisions of §§ 57.5 (a), 57.15 and 57.17 (a) relative to complete inspections shall apply to appeal inspections.*† [Reg. 5, sec. 9]

57.29 Superseded certificates. The appeal inspection certificate shall supersede all other certificates for inspections of the same lot of hay previously made at the same place and applicable to the same lot of hay at the time the appeal certificate was issued. When an inspection certificate has been superseded under the regulations in this part by an appeal inspection certificate, it shall not thereafter represent the class and grade of the lot of hay described therein. If the original and all copies of the superseded certificates are not delivered to the person with whom the application for an appeal inspection is filed, the hay inspector issuing the appeal inspection certificate shall give such public notice of the issuance of such appeal inspection certificate and cancelation of the original certificate as he considers necessary to prevent fraud.*† [Reg. 5, sec. 10]

LICENSED HAY INSPECTORS

57.30 Who may be licensed. Persons who show proper qualifications, who are not interested directly or indirectly in the business of merchandising hay, and who complete satisfactorily a course of training prescribed by the Chief of the Bureau, may be licensed by the Secretary to inspect hay under the Act. Licenses for such persons shall be countersigned by the specialist in charge or the supervising inspector under whose direction the licensee is to make inspections.*† [Reg. 6, sec. 1]

57.31 Investigation of inspectors. The efficiency of licensed inspectors in the application of the standards will be checked from time to time by supervising inspectors designated by the Chief of the Bureau.*† [Reg. 6, sec. 2]

57.32 Suspension of license. Any inspector's license may be suspended, pending final action by the Secretary, by the Chief of the Bureau, or by any official by whom it may be countersigned, whenever such official shall consider such action to be for the good of the service. Within seven days after any such suspension the licensee may file an appeal in writing to the Secretary, supported by any evidence he may wish to offer in his behalf.*† [Reg. 6, sec. 3]

CHARGES FOR INSPECTION SERVICE

57.33 Fees and expenses—(a) Basis for fees and charges. The fees and charges to be collected by inspectors for complete, partial, and sample inspections at shipping points, designated markets, and other points shall be fixed in accordance with paragraphs (b), (c) of this section.

(b) Salaried employees of the U. S. Department of Agriculture. Fees and charges for inspections by salaried employees of the Depart-

*†For statutory and source citations, see note to § 57.1.

ment of Agriculture shall be fixed by the Secretary and published in accordance with § 57.37.

(c) **Under cooperative agreements.** Fees and charges for inspections made under a cooperative agreement with a State or other organization shall be in accordance with the terms of such agreement.

(d) **For appeal inspections.** The cost to the applicant for an appeal inspection shall include an inspection fee of \$4.00 plus any charge for travel or other items incurred by the Bureau in making such appeal inspection, Provided That when it is found that there was a material error in the complete inspection or sample inspection from which the appeal is taken no fee or charges will be assessed against the applicant except that appeal inspection for Government agencies shall be at actual cost. When two or more inspections are made at the same time and place, the expense of making such inspections other than fees shall be pro rated among the total number of inspections made and only those expenses covering inspections sustained will be assessed against the applicant.

(e) **Traveling expenses.** Such further charges may be made for traveling expenses and other items paid or incurred by the inspector in connection with an inspection made at a place where no inspector is located, or appeal inspection where the services of a second inspector are required. These charges shall be included with the fee for inspection on the bill furnished the applicant.

(f) **For copies of inspection certificates.** For not to exceed three extra copies of a certificate furnished to any person financially interested in the product involved, the fee shall be \$1.*† [Reg. 7, sec. 1]

57.34 How fees shall be paid. The fees and charges for each inspection or appeal inspection shall be paid by the applicant in accordance with the directions on the fee bill furnished him by the inspector and in advance if required by the inspector.*† [Reg. 7, sec. 2]

57.35 Disposition of fees. Fees and charges for inspections or appeal inspections made (a) by inspectors who are employed exclusively by the Bureau shall be remitted promptly to the Bureau, (b) by licensed inspectors acting exclusively for the Bureau, less the percentage thereof, which he is allowed by the terms of his contract of employment as compensation for his service, shall be remitted to the Bureau, and (c) by inspectors acting under a cooperative agreement with a State or other agency shall be disposed of in accordance with the terms of such agreement.*† [Reg. 7, sec. 3]

MISCELLANEOUS

57.36 Fraud or misrepresentation. Any misrepresentation or any deceptive or fraudulent practice made or committed by any applicant for inspection may be deemed sufficient cause for debarring the person guilty thereof from any further benefits of the Act.*† [Reg. 8, sec. 1]

57.37 Publications. Publications under the Act and the regulations in this part shall be made in Service and Regulatory An-

nouncements of the Bureau of Agricultural Economics and such other media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 8, sec. 2]

57.38 Political activity. All inspectors authorized either by appointment or license from the Secretary of Agriculture, to issue inspection certificates under the Act and the regulations in this part are forbidden, during the period of their appointment or license, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including temporary and cooperative employees, and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for dismissal in the case of appointees, and revocation of licenses in the case of licensees.*† [Reg. 8, sec. 3]

57.39 Identification. An identification card licensing or authorizing the person whose signature appears on the back to inspect hay shall be accepted as proper identification.*† [Reg. 8, sec. 4]

57.40 Receipt of papers to be recorded. The inspector or other official operating under the regulations in this part receiving any paper accepted for filing shall note thereon, or on a record kept for the purpose, the place and date of its receipt.*† [Reg. 8, sec. 5]

PART 58—BEANS AND PEAS (INSPECTION AND CERTIFICATION)

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58.2	Terms defined.		Appeals
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*†For statutory and source citations, see note to § 57.1.

Sec.		Sec.	
	Licensed samplers		Miscellaneous
58.30	Who may be licensed as a sampler.	58.36	Publications.
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58.34	Fees and charges paid by applicant.	58.40	Certificate superseded shall not represent grade of beans and peas.
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CROSS REFERENCE

Dry bean warehouses, regulations: See Part 106.

DEFINITIONS

Section 58.1 Meaning of words. Words in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 58.1 to 58.41, inclusive, issued under the authority contained in 47 Stat. 637; 7 U.S.C. 414.

†The source of §§ 58.1 to 58.41, inclusive, is Rules and regulations of the Secretary of Agriculture governing the inspection and certification of beans and peas, Sept. 8, 1932.

58.2 Terms defined. For the purpose of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) **The Act.** The following provision of an Act of Congress entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1933," approved July 7, 1932 (47 Stat. 637; 7 U.S.C. 414):

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and/or condition of cotton, tobacco, fruits and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) **Person.** Individual, association, partnership, or corporation.

(c) **Secretary.** Secretary or Acting Secretary of Agriculture of the United States.

(d) **Bureau.** Bureau of Agricultural Economics of the United States Department of Agriculture.

(e) **Beans and peas.** Beans and peas shall include dry edible beans; soybeans; cowpeas; dry peas, whole and split; and similar dry leguminous seeds used for food, feed, or manufacturing purposes.

(f) **Inspector.** Employee of the Department of Agriculture authorized by the Secretary, or other person licensed by him in accordance with the regulations in this part, to investigate and certify to shippers and other interested parties the class, quality, and/or condition of beans and peas under the Act.

(g) **Official sampler.** Employee of the Department of Agriculture, or other person authorized or licensed by the Secretary, to draw official samples of beans and peas under the Act and the regulations in this part.

(h) **Inspection certificate.** Certificate of the class, quality, and/or condition of beans and peas issued by an inspector under the Act.

(i) **Interested party.** Any person who has a financial interest in the beans and peas involved, including all carriers and warehouses who have handled or will handle the beans and peas, the present owner or any person who owned the beans and peas prior to him, and persons to whom the beans and peas have been sold and whose acceptance thereof hinges on the inspection, but not including persons who merely are negotiating for their purchase.

(j) **Regulations.** Rules and regulations of the Secretary under the Act.*† [Reg. 1, sec. 2]

ADMINISTRATION

58.3 Chief of Bureau. The Chief of the Bureau is charged with the supervision of the performance of all duties arising in the administration of the Act.*† [Reg. 2, sec. 1]

WHERE INSPECTION SERVICE IS OFFERED

58.4 Where service is offered. Inspections may be made for the purpose of the Act wherever beans and peas are offered for interstate shipment including farms, warehouses, elevators, loading platforms, wagons, trucks, railroad cars, boats, barges, and vessels and at designated important central markets whenever inspectors are available and at nearby points accessible to such inspectors.*† [Reg. 3, sec. 1]

INSPECTION

58.5 Standards to be used. Inspectors will use United States standards when inspecting beans and peas to which such standards apply. Beans and peas for which there are no United States standards may be graded under any standards the applicant desires used and which the inspector can interpret or a certificate may be issued which gives a description of the class, quality, and/or condition of the beans and peas without reference to any standards.*† [Reg. 4, sec. 1]

58.6 Who may obtain inspection. Application for inspection of beans and peas under the Act may be made by a State, or by any

*†For statutory and source citations, see note to § 58.1.

interested party, or by any authorized person in behalf of such applicant.*† [Reg. 4, sec. 2]

58.7 How inspection may be obtained. Application for inspection of beans and peas under the Act may be made in writing, or orally, by telegraph, telephone, or otherwise. Such application may be made to any inspector. If made orally, the inspector may require that it be confirmed in writing.*† [Reg. 4, sec. 3]

58.8 Form of application. The written application for inspection of beans and peas under the Act shall be in English, and shall include the following information: (a) The date of the application; (b) the identification and location of the beans and peas; (c) the name and post-office address of the applicant and of the person, if any, making the application in his behalf; (d) the interest of the applicant (except the State) therein; (e) whether the beans and peas have been inspected previously, and the facts relating to such inspection; and (f) such other necessary information as the inspector may require.*† [Reg. 4, sec. 4]

58.9 When an application may be withdrawn. Application for inspection may be withdrawn by the applicant at any time before the sample or any portion thereof is drawn upon payment of any expenses incurred in connection therewith as provided in § 58.28.*† [Reg. 4, sec. 5]

58.10 When an inspection may be refused. Any application may be rejected by the inspector with whom it is filed or by the Chief of the Bureau for any noncompliance with the Act or the regulations in this part and all expenses incurred in connection therewith shall be paid by the applicant as provided in § 58.28.*† [Reg. 4, sec. 6]

58.11 Certificate issued on each lot. Inspectors shall sign and issue a separate certificate for each lot of beans and peas inspected by them. For purposes of issuing certificates each kind of beans and peas shall be considered as a separate lot, except, however, that each class and/or grade, or combination or part thereof of any one kind of beans and peas may be considered as a separate lot and a certificate issued thereon when requested by the applicant, or in the discretion of the inspector.*† [Reg. 4, sec. 7]

58.12 Disposition of certificates. The original inspection certificate, immediately upon its issuance, shall be delivered or mailed to the applicant or a person designated by him. One copy shall be filed in the office of the inspector, and one or more copies forwarded to the supervising inspector or the Chief of the Bureau. Additional copies may be delivered upon request (a) to the applicant for whom the inspection was made, or his order; (b) to interested parties who have sold or purchased the beans and peas involved on the basis of United States standards; and (c) to interested carriers and public warehouses.*† [Reg. 4, sec. 8]

58.13 Advance information. Upon request of an applicant for whom an inspection has been made, all or any part of the contents of the certificate may be telegraphed or telephoned to him at his expense.*† [Reg. 4, sec. 9]

REINSPECTION

58.14 When a reinspection may be made. Whenever an applicant for whom an inspection has been made believes the class, quality, and/or condition of a lot of beans and peas as stated in the inspection certificate issued to him is not correct he may request the inspector who made the original inspection to reinspect the lot, provided (a) the request for reinspection is made not later than the close of the second business day after the original inspection was made; (b) the beans and peas have not left the place where the original inspection was made; (c) the identity of the beans and peas has not been lost; and (d) the certificate issued as a result of the original inspection is surrendered to the inspector.*† [Reg. 5, sec. 1]

58.15 Reinspection certificates. Inspectors who made a reinspection of a lot of beans and peas, in accordance with § 58.14, shall sign and issue a certificate in accordance with § 58.11. Such certificate shall bear the notation "Reinspection" on its face, followed by the word "Sustained" if the class, quality and/or condition is the same as that shown in the original inspection and by the word "Reversed" if the class, quality and/or condition is not the same as that shown in the original inspection. Copies of reinspection certificates shall be mailed or delivered to all interested parties who received copies of the certificate issued on the original inspection.*† [Reg. 5, sec. 2]

58.16 Second inspection in new location not considered a reinspection. A lot of beans and peas which has been inspected as provided in §§ 58.5–58.8 and/or reinspected as provided in §§ 58.14–58.17 and which moves to another market where an inspector is available may be inspected by such inspector and such inspection shall not be considered a reinspection as defined in §§ 58.14, 58.15.*† [Reg. 5, sec. 3]

58.17 Reinspection not to prevent filing appeals. Nothing in §§ 58.14–58.17 providing for a reinspection of a lot of beans and peas by a licensed inspector shall prevent the applicant for reinspection or any other interested party from filing an appeal in accordance with the provisions of §§ 58.18, 58.19.*† [Reg. 5, sec. 4]

APPEALS

58.18 When an appeal may be taken. Whenever an applicant for whom an inspection has been made or any other interested party believes the class, quality, and/or condition of a lot of beans and peas stated in any inspection certificate is not the correct class, quality, and/or condition of such beans and peas, he may file an appeal, provided (a) all of the beans and peas covered by such inspection are available for an appeal inspection; (b) the beans and peas are accessible for making an appeal inspection; (c) the condition of the beans and peas has not undergone any material change; and (d) the identity of the beans and peas has not been lost.*† [Reg. 6, sec. 1]

58.19 How to take an appeal. Application for an appeal, under the Act, may be made in writing or orally, by telegraph, telephone,

*†For statutory and source citations, see note to § 58.1.

or otherwise. If made orally it shall be confirmed the same day in writing. Such application shall be filed (a) with an inspector, or (b) with the Chief of the Bureau. Such application shall state the reasons therefor and shall be accompanied by the certificate for the inspection from which the appeal is taken, if in the possession of the appellant.*† [Reg. 6, sec. 2]

58.20 When an appeal may be withdrawn. An appeal may be withdrawn by the appellant at any time before the appeal sample or any portion thereof is drawn upon payment of any expense incurred by the Department in connection therewith as provided in § 58.28.*† [Reg. 6, sec. 3]

58.21 When an appeal may be dismissed. If it shall appear to the Chief of the Bureau or the inspector designated to handle the appeal that the reasons stated in an appeal are frivolous or unsubstantial, or the Act or the regulations in this part have not been complied with, the appeal may be dismissed, the appellant shall be notified by telegraph or in writing of the reason for such dismissal, a statement of such action shall be included in the record of such appeal by the officer making the same, and all expenses incurred in connection therewith shall be paid by the appellant as provided in § 58.28. Upon the dismissal or withdrawal of an appeal, any inspection certificate filed therewith shall be returned immediately to the person by whom filed or delivered, upon his written order.*† [Reg. 6, sec. 4]

58.22 Who shall make appeal inspections. Appeal inspections shall be made by inspectors designated for the purpose by the Chief of the Bureau.*† [Reg. 6, sec. 5]

58.23 Appeal inspection certificates. When an appeal inspection has been made, an appeal inspection certificate shall be signed and issued by the inspector making the appeal inspection. This appeal inspection certificate shall state the class, quality, and condition of the beans as shown by the appeal inspection. It shall supersede all other certificates for inspection and/or reinspection of the same lot of beans and peas previously made and shall refer specifically to the inspection from which the appeal is taken. Copies of the appeal inspection certificate shall be sent to all interested parties, if known, other than the carriers, and to such of them as have been applicants for any former inspection of the beans and peas on which the special inspection is made. In all other respects the provisions of §§ 58.5–58.13 relative to inspections shall apply to appeal instructions.*† [Reg. 6, sec. 6]

LICENSED INSPECTORS

58.24 Who may be licensed. Persons who show proper qualifications, who are not interested directly or indirectly in the business of merchandising beans and peas, and who complete satisfactorily a course of training prescribed by the Chief of the Bureau, may be licensed by the Secretary to inspect beans and peas under the Act. Licenses for such persons shall be countersigned by the specialist in charge, the specialist in inspection, or the supervising inspector under whose direction the licensee is to make inspections.*† [Reg. 7, sec. 1]

58.25 License may be suspended. Pending final action by the Secretary, any inspector's license may be suspended by the Chief of the Bureau or by any official by whom it may be countersigned, whenever the Chief of the Bureau or such official shall consider such action to be for the good of the service. Within ten days after any such suspension the licensee may file an appeal in writing to the Secretary supported by any evidence he may wish to offer in his behalf.*† [Reg. 7, sec. 2]

FEES AND CHARGES

58.26 Fees and charges for inspections. The fees and charges to be collected by inspectors for inspections and reinspections of beans and peas at shipping points, designated markets, and other points shall be fixed in accordance with paragraphs (a), (b), and (c) of this section.

(a) Inspection by salaried employees of the Department of Agriculture. Fees and charges for inspections by salaried employees of the Department of Agriculture shall be fixed by the Secretary and published in accordance with § 58.36.

(b) Inspections made under cooperative agreements. Fees and charges for inspections made under a cooperative agreement with a State or other organization shall be in accordance with the terms of such agreement approved by the Chief of the Bureau.

(c) Fees and charges for reinspections. Fees and charges for reinspections of beans and peas shall be the same as those for inspections as provided in paragraphs (a) and (b) of this section, Provided, however, That when an inspection is reversed by a reinspection no fees and charges shall be assessed against the applicant.*† [Reg. 8, sec. 1]

58.27 Fees and charges for appeal inspections. Fees and charges for appeal inspections of beans and peas shall be fixed by the Secretary and published under § 58.36, Provided That when it is found that there was a material error in the inspection from which the appeal is taken, no fees or charges will be assessed against the appellant.*† [Reg. 8, sec. 2]

58.28 Fees and charges when inspections or appeal inspections are withdrawn or refused. When applications for inspection or appeal inspection are withdrawn by the applicant in accordance with § 58.9, or § 58.20, or when such applications are refused in accordance with § 58.10, or § 58.21, the regular fee will not be charged but the applicant may be required to pay a reasonable amount for the inspector's time, together with all expenses for travel and other items in connection with such application prior to such withdrawal or refusal.*† [Reg. 8, sec. 3]

58.29 Payment of fees and charges. The fees and charges for each inspection or appeal inspection shall be paid by the applicant in accordance with the directions on the fee bill furnished him by the inspector and in advance if required by the inspector. Fees and charges for inspections or appeal inspections made by inspectors who are employed exclusively by the Department of Agriculture shall be remitted promptly to the Disbursing Clerk of the Department of

*†For statutory and source citations, see note to § 58.1.

Agriculture. Fees for inspections made by a licensed inspector acting exclusively for the Department of Agriculture, less the percentage thereof which he is allowed by the terms of his contract of employment as compensation for his service, shall be remitted to the Disbursing Clerk of the Department of Agriculture. Fees for inspections made by an inspector acting under a cooperative agreement with a State or other agency shall be disposed of in accordance with the terms of such agreement. The Chief of the Bureau will cause to be returned to the person entitled thereto any money remitted in excess of the amount due the United States, and to be deposited in the United States Treasury as miscellaneous receipts all moneys found to be due the United States.*† [Reg. 8, sec. 4]

LICENSED SAMPLERS

58.30 Who may be licensed. Persons who show proper qualifications, and who are not interested directly or indirectly in the business of merchandising beans and peas may be licensed by the Secretary to draw official samples of beans and peas under the Act from lots offered for inspection and reinspection, at points where there is no regular licensed inspector and from lots offered for appeal inspection at any point.*† [Reg. 9, sec. 1]

58.31 When samples shall be drawn. Upon request of an inspector or an applicant for inspection, licensed samplers shall draw official samples from designated lots in accordance with the methods approved by the Chief of the Bureau.*† [Reg. 9, sec. 2]

58.32 Where samples shall be forwarded. Licensed samplers shall forward all samples drawn by them to such inspectors as the Chief of the Bureau may direct and shall furnish with each sample such information as the Chief of the Bureau may request.*† [Reg. 9, sec. 3]

58.33 Samples shall be official. Samples drawn by licensed samplers shall be accepted by any inspector as official samples and used as a basis for determining the class, quality, and/or condition of the lot from which samples are drawn.*† [Reg. 9, sec. 4]

58.34 Fees and charges paid by applicant. Fees and charges for the services of licensed samplers shall be reasonable, subject to the approval of the Chief of the Bureau, and shall be paid by the applicant.*† [Reg. 9, sec. 5]

58.35 License may be suspended. Pending final action by the Secretary, a sampler's license may be suspended by the Chief of the Bureau or by any official by whom it may be countersigned whenever such official shall deem such action to be for the good of the service. Within ten days after any such suspension the licensee may file an appeal in writing to the Secretary, supported by any argument or evidence that he may wish to offer in his behalf.*† [Reg. 9, sec. 6]

MISCELLANEOUS

58.36 Publications. Publications under the Act and the regulations in this part shall be made in Service and Regulatory Announce-

ments of the Bureau of Agricultural Economics and such other media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 10, sec. 1]

58.37 Beans and peas must be accessible. The applicant shall cause the beans and peas for which inspection, reinspection, or appeal inspection is requested to be made accessible for examination and to be so placed as to disclose its class, quality, and condition.*† [Reg. 10, sec. 2]

58.38 Order in which inspections made. The inspector shall make as many inspections, reinspections, and appeal inspections as facilities will permit and as far as practicable in the order in which applications are received, except that appeal inspections shall take precedence over other inspections.*† [Reg. 10, sec. 3]

58.39 Authority of agents. Proof of authority of any person applying for inspection on behalf of another may be required, in the discretion of the inspector.*† [Reg. 10, sec. 4]

58.40 Certificate superseded shall not represent grade of beans and peas. When an inspection certificate or reinspection certificate has been superseded under the regulations in this part by an appeal inspection certificate, no inspection certificate issued prior thereto shall thereafter represent the grade of the lot of beans and peas described therein. If the original and all copies of the superseded certificate or certificates are not delivered to the person with whom the application for an appeal inspection is filed, the inspector issuing the appeal inspection certificate shall give such public notice of the issuance of such appeal inspection certificate and cancelation of the original certificate or certificates as he considers necessary to prevent fraud.*† [Reg. 10, sec. 5]

58.41 Misrepresentation. Any misrepresentation or any deceptive or fraudulent practice made or committed by any applicant for inspection may be deemed sufficient cause for debarring the person guilty thereof from any further benefits of the Act, and in case of violations of the Food and Drugs Act of June 30, 1906 (34 Stat. 768; 21 U.S.C. Chapter 1), may subject the shipper to prosecution and beans and peas to seizure.*† [Reg. 10, sec. 6]

PART 59—SEEDS (INSPECTION AND CERTIFICATION)

Sec.		Sec.	
	Definitions	59.7	How application should be made.
59.1	Meaning of words.	59.8	Form of application.
59.2	Terms defined.	59.9	When an inspection may be refused.
	Administration	59.10	Certificates; issuance.
59.3	Chief of Bureau.	59.11	Communicating certificate information.
	Service	59.12	Disposition of certificates.
59.4	Where service is offered.	59.13	Corrected inspection certificates.
	Inspection		Fees and charges
59.5	Basis of inspection.	59.14	Fees and charges for inspections.
59.6	Who may obtain inspection.	59.15	Payment of fees and charges.

*†For statutory and source citations, see note to § 58.1.

Sec.	Sec.
Miscellaneous	59.18 Authority of agents.
59.16 Publications.	59.19 Certificate superseded is void.
59.17 Seeds and records made acces-	59.20 Misrepresentation.
sible.	59.21 Fees and charges.

CROSS REFERENCE

Seeds warehouses, regulations: See Part 113.

DEFINITIONS

Section 59.1 Meaning of words. Words in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 59.1 to 59.21, inclusive, issued under the authority contained in 47 Stat. 1459; 7 U.S.C. 414.

†The source of §§ 59.1 to 59.21, inclusive, is Rules and regulations of the Secretary of Agriculture governing origin verification of seed, July 25, 1933.

59.2 Terms defined. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) **The Act.** The following provision of an Act of Congress entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1934, and for other purposes," approved March 3, 1933 (47 Stat. 1459; 7 U.S.C. 414):

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and/or condition of cotton, tobacco, fruits and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) **Person.** Individual, association, partnership, or corporation.

(c) **Secretary.** Secretary or Acting Secretary of Agriculture of United States.

(d) **Bureau.** Bureau of Agricultural Economics of the United States Department of Agriculture.

(e) **Seed.** Alfalfa seed, red clover seed, and such other kinds of seed used for planting purposes as may be designated by the Chief of the Bureau.

(f) **Class and origin.** The designation of the class of seed as to kind, e. g., alfalfa, red clover, and the class as to origin or place where grown, i. e., one or more States, political subdivisions of a

State, or districts prescribed or approved by the Chief of the Bureau, e. g., Ohio; Millard County, Utah; eastern Oregon.

(g) Inspector. Employee of the U. S. Department of Agriculture or other person authorized by the Secretary to investigate and certificate the class and origin of seed under the Act.

(h) Grower. Person who has produced the seed in question on his own farm or on a farm operated by him, or who is a seed-crop sharer in such seed.

(i) Shipper. Person who purchases seed of the kind in question in his locality or district where a surplus of this seed is usually produced, and who ships such seed to other shippers or to general seed dealers.

(j) General seed dealer. Person who buys and sells seed of miscellaneous kinds either at wholesale or at retail.

(k) Verified-origin seed dealer. A seed dealer who is authorized under the regulations in this part and the instructions of the Chief of the Bureau to issue verified-origin seed certificates for seed inspected for him.

(l) Declaration of origin. A declaration in a form approved by the Chief of the Bureau either of a grower stating that he is the grower of the seed in question and certifying to the correctness of certain facts given by him, or of a shipper stating that he has obtained the seed in question from a grower or another shipper and also stating among other things that the facts given by him are correct to the best of his knowledge and belief, and that the place where grown and identity of each lot are properly covered in his records, which will be made accessible for verification by a Federal seed inspector at any time upon request.

(m) Inspection certificate. Certificate of the class and origin of seed issued by an inspector under the Act, which certificate is not transferable.

(n) Verified-origin seed certificate. The commercial certificate of the class and origin of seed, based upon one or more inspection certificates previously issued, and which accompanies one or more parcels of seed, issued under the Act by a verified-origin seed dealer or an inspector, in accordance with the rules and regulations in this part and the instructions of the Chief of the Bureau.

(o) Interested party. Any person who has a financial interest in the seed involved, including all carriers and warehouses which have handled or will handle the seed, the present owner or persons who owned the seed prior to him, and person to whom the seed has been sold and whose acceptance thereof hinges on the inspection.

(p) Regulations. Rules and regulations of the Secretary governing the certification of seed as to class and origin under the Act.*† [Reg. 1, sec. 2]

ADMINISTRATION

59.3 Chief of Bureau. The Chief of the Bureau is charged with the supervision of the performance of all duties arising in the administration of the Act.*† [Reg. 2, sec. 1]

*†For statutory and source citations, see note to § 59.1.

WHERE SERVICE IS OFFERED

59.4 Where service is offered—(a) Service points. At points indicated in paragraphs (b) and (c) of this section, seed meeting the requirements of the regulations in this part and the instructions of the Chief of the Bureau may be verified as to class and origin, and inspection certificates issued.

(b) Designated markets. Washington, Chicago, Kansas City, Minneapolis, Denver, and Los Angeles are hereby designated as important central markets at which inspectors are located and available for making inspections. Other important markets at which inspectors will be available may be designated by the Secretary from time to time.

(c) Other points. Places where verified-origin seed dealers and others operating under the aforementioned agreement with the Bureau are located.*† [Reg. 3, sec. 1]

INSPECTION

59.5 Basis of inspection. Inspection for class and origin shall be based upon such examination of seed and documents, and be made under such conditions and in accordance with such methods, as may be prescribed or approved by the Chief of the Bureau.*† [Reg. 4, sec. 1]

59.6 Who may obtain inspection. An application for the inspection of seed under the Act may be made by a State, a verified-origin seed dealer, or any other interested party who has complied with the regulations and instructions of the Chief of the Bureau pertaining to the making of such application.*† [Reg. 4, sec. 2]

59.7 How application should be made. Application for inspection of seed under the Act shall be made in writing, on forms approved by the Chief of the Bureau. Such applications shall be sent to the inspector in the designated market which most conveniently serves the applicant.*† [Reg. 4, sec. 3]

59.8 Form of application. The written application for inspection of seed as to class and origin under the Act shall be in English, in a form prescribed by the Chief of the Bureau, and shall include the following information: (a) date of application, (b) name and post-office address of applicant, (c) kind of seed, (d) name of grower or shipper, (e) shipping point and address of grower or shipper if different from shipping point, (f) date of shipment, (g) shipper's lot identification, (h) applicant's lot identification, (i) weight in pounds, (j) place where grown, (k) kind of declaration or assurance of origin furnished applicant, and (l) such other information as the inspector or Chief of the Bureau may require.*† [Reg. 4, sec. 4]

59.9 When an inspection may be refused. An application may be rejected by the inspector with whom it is filed or by the Chief of the Bureau for any noncompliance with the Act, with the regulations in this part or with the instructions of the Chief of the Bureau, or whenever an inspector is not available for making the inspection, or

whenever the evidence is insufficient upon which to determine the correct origin. All expenses incurred in connection therewith shall be paid by the applicant, as provided in §§ 59.14, 59.15.*† [Reg. 4, sec. 5]

59.10 Certificates; issuance. The inspector shall sign and issue an inspection certificate for such lot or lots of seed as are included in the application, the class and origin of which are covered by approved growers' or shippers' declarations of origin, verified-origin seed certificates, or other approved assurances of class and origin furnished by the applicant in compliance with the instructions of the Chief of the Bureau.*† [Reg. 4, sec. 6]

59.11 Communicating certificate information. Upon request from an applicant for whom an inspection has been made, any part of the contents of the certificate may be telegraphed or telephoned to him at his expense.*† [Reg. 4, sec. 7]

59.12 Disposition of certificates. The original inspection certificate, immediately upon its issuance, shall be delivered or mailed to the applicant; one copy shall be filed in the office of the inspector and one copy forwarded to the supervising inspector or to the Chief of the Bureau.*† [Reg. 4, sec. 8]

59.13 Corrected inspection certificates. (a) A corrected certificate shall be issued for any lot or lots of seed under conditions outlined in paragraphs (b) and (c) of this section.

(b) Whenever an applicant for whom an inspection has been made believes the class or other information in connection with any lot or lots of seed, as stated in an inspection certificate issued to him, is not correct, and returns the certificate covering such lot or lots of seed with a corrected application under the same serial number and covering all lots of seed in the original certificate which are eligible for verification, the inspector will investigate the applicant's claims and if he finds them correct he will issue a corrected certificate.

(c) Whenever an inspector finds that the class and origin for a lot or lots of seed, or any of the information upon which the class and origin of such lots have been based in an inspection certificate, is incorrect or incomplete, he may request the applicant to return the incorrect certificate with a corrected application under the same serial number and covering all lots of seed in the original certificate which are eligible for verification, and shall then issue a corrected certificate covering the lot or lots in question.*† [Reg. 4, sec. 9]

FEEES AND CHARGES

59.14 Fees and charges for inspections. The fees and charges to be collected for class and origin inspections of seed shall be fixed by the Secretary and published in accordance with § 59.16.*† [Reg. 5, sec. 1]

59.15 Payment of fees and charges. The fees and charges for inspections shall be paid by the applicant in accordance with the directions on the fee bill furnished him, and in advance if required by the inspector.*† [Reg. 5, sec. 2]

*†For statutory and source citations, see note to § 59.1.

MISCELLANEOUS

59.16 Publications. Publications under the Act and the regulations in this part shall be made in Service and Regulatory Announcements of the Bureau of Agricultural Economics and in such other media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 6, sec. 1]

59.17 Seeds and records made accessible. The applicant shall cause the seed and/or records and documents covering the lots for which inspection is requested, and such other seed and/or records and documents covering other lots of the same kind of seed as that for which inspection is requested which are now or have been owned or stored by the applicant, to be made accessible for examination or inspection, when requested by the inspector.*† [Reg. 6, sec. 2]

59.18 Authority of agents. Proof of authority of any person applying for inspection on behalf of another may be required, in the discretion of the inspector.*† [Reg. 6, sec. 3]

59.19 Certificate superseded is void. When an inspection certificate has been superseded under the regulations in this part by a corrected certificate no inspection certificate or verified-origin seed certificate issued prior thereto for any corrected lot or lots shall thereafter represent the class and origin of the lot or lots of seed described therein on which incorrect or incomplete information was given. If the original of the superseded certificate is not delivered to the inspector issuing the corrected certificate and proper assurance is not given of the cancelation or correction of verified-origin seed certificates which were based upon such incorrect certificate, the inspector issuing the corrected certificate or the Chief of the Bureau shall take such action and give such notice of the issuance of such corrected certificate and cancelation of the original inspection certificate or certificates and invalidation of corresponding certified-origin seed certificates as he considers necessary to prevent misrepresentation or fraud.*† [Reg. 6, sec. 4]

59.20 Misrepresentation. Any misrepresentation or any deceptive or fraudulent practice made or committed by an applicant for inspection in connection with the service or any violation by a verified-origin seed dealer of the agreement between him and the Bureau may be deemed sufficient cause for debarring the person guilty thereof from any further benefits of the Act, and in the case of a violation of the Federal Seed Act (37 Stat. 506, 39 Stat. 453, 44 Stat. 325; 7 U.S.C. Chapter 5) or the Federal Food and Drugs Act (34 Stat. 768; 21 U.S.C. Chapter 1), he may be subject to prosecution and the seed to seizure.*† [Reg. 6, sec. 5]

59.21 Fees and charges. The fees and charges for the inspection of alfalfa and red clover seed for class and origin are as follows:

(a) An advance deposit of \$25 is required with each application of a seed dealer for the privilege of issuing verified-origin seed certificates for alfalfa and/or red clover seed and thus becoming enrolled as a verified-origin seed dealer. This deposit applies on the regular fees provided under (b) of this section. If the application is re-

ceived prior to September 1 of the fiscal year (August 1–July 31) for which it is made only one \$25 deposit is required for alfalfa or red clover seed, or for both kinds of seed. If a verified-origin seed dealer for only alfalfa or red clover seed wishes to file another application after September 1 for the kind of seed not covered by his original application, he may do so by depositing an additional \$25 and by paying the necessary travel and other expenses of the inspector to examine records and stocks of the applicant, the deposit so made, but not the expenses, to apply towards the fees for that kind of seed as provided under (b) of this section. Applications received after September 1 from dealers not enrolled in the service for either alfalfa or red clover seed ordinarily will be refused. The Chief of the Bureau may use his discretion, however, in approving such applications in unusually meritorious cases.

(b) The fee for inspection for class and origin of a lot or of lots of seed included in one application from a verified-origin seed dealer shall be 3 cents per 100 pounds (receiving weight) with a minimum fee of \$1 for each certificate.

(c) The fee for inspection for class and origin of a lot or of lots of seed included in one application from a person who is not a verified-origin seed dealer but who is the producer or who handles only locally-produced seed and who keeps adequate records and seed samples and agrees to submit such records and samples for examination by an inspector at any time on request and otherwise to comply with the rules and regulations of the Secretary and the instructions of the Chief of the Bureau pertaining to the use of verified-origin seed certificates and the Seed Verification Service shall be 5 cents per 100 pounds, with a minimum fee of \$5 for each certificate plus a charge for the time, travel, and other expenses of the inspector in examining records and stocks and performing other duties incidental thereto.* [Fees and charges, Sec. Agric., July 25, 1933]

PART 60—RICE (INSPECTION AND CERTIFICATION)

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60.2	Terms defined.	60.18	Certificate; contents.
	Administration	60.19	Lot inspection certificate.
60.3	Chief of Bureau.	60.20	Sample inspection certificate.
	Inspection service	60.21	Factor analysis certificate.
60.4	Kind of service.	60.22	Equal-to-type certificate.
60.5	Who may obtain service.	60.23	Milling-test certificates.
60.6	How to make application.	60.24	Origin certificate.
60.7	Form of application.	60.25	Advance information.
60.8	When application is deemed filed.	60.26	Disposition of certificates.
60.9	When application may be withdrawn.	60.27	Superseded certificates; copies.
60.10	When inspection may be refused.	60.28	Certificates; copies filed with rice supervisor.
60.11	Authority of agent.		Licensed inspectors
60.12	Basis of service.	60.29	Who may be licensed.
60.13	Date of inspection.	60.30	Application; requirements.
60.14	Lot inspection.	60.31	Applicant to be examined for competency.
60.15	Sample inspection.	60.32	Licensee shall be disinterested.

*For statutory citation, see note to § 59.1.

Sec.	Sec.
60.33 License; property of Bureau.	60.50 Contents of appeal application.
60.34 Licenses; conditions governing issuance.	60.51 Inspection certificate; filing.
60.35 Suspension of license.	60.52 Record of filing appeal.
60.36 Violations to be reported.	60.53 When appeal may be dismissed.
60.37 Instructions by rice supervisors.	60.54 When appeal may be withdrawn.
60.38 Instructions by chief inspectors.	60.55 Rice supervisor to determine appeals.
60.39 Inspection and certification; when required.	60.56 Appeal inspection certificates; issuance.
60.40 Lot inspection to be based on representative sample.	60.57 Appeal inspection certificates; disposition
60.41 Lot certification; when prohibited.	60.58 Appeal certificate supersedes inspector's certificate.
60.42 Inspection; restrictions.	60.59 Right of appeal not to be impaired.
60.43 Inspector to make records.	60.60 Appeal inspection to be based on representative sample.
Samplers	Charges for inspection
60.44 Authorized samplers.	60.61 Fees and charges.
60.45 Suspension or revocation of authorization.	60.62 How fees and charges shall be paid.
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Appeal inspection	60.63 Fraud or misrepresentation.
60.47 When and by whom appeal may be taken.	60.64 Publications.
60.48 How to obtain appeal inspection.	60.65 Political activity.
60.49 Advance notice of appeal.	60.66 Identification.

DEFINITIONS

Section 60.1 Meaning of words. Words in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 60.1 to 60.66, inclusive, issued under the authority contained in 49 Stat. 275; 7 U.S.C., Sup., 414.

†The source of §§ 60.1 to 60.66, inclusive, (except for the amendments noted in the text,) is Regulations of the Secretary of Agriculture governing the inspection and certification of rice, Jan. 15, 1936.

60.2 Terms defined. For the purpose of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) **Act.** The following provisions of an Act of Congress entitled "An Act making appropriations for the Department of Agriculture and for the Farm Credit Administration for the fiscal year ending June 30, 1936, and for other purposes", approved May 17, 1935 (49 Stat. 275; 7 U.S.C., Sup., 414):

For enabling the Secretary of Agriculture, independently and in cooperation with other branches of the Government, State agencies, purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations, and persons or corporations engaged in the production, transportation, marketing, and distribution of farm and food products, whether operating in one or more jurisdictions, to investigate and certify to shippers and other interested parties the class, quality, and condition of cotton, tobacco, fruits and vegetables, whether raw, dried, or canned, poultry, butter, hay, and other perishable farm products when offered for interstate shipment or when received at such important central markets as the Secretary of Agriculture may from time to time designate, or at points which may be conveniently reached therefrom, under such rules and regulations as he may

prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered; *Provided*, That certificates issued by the authorized agents of the Department shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(b) **Secretary.** Secretary of Agriculture of the United States.

(c) **Bureau.** Bureau of Agricultural Economics of the United States Department of Agriculture.

(d) **Person.** Individual, association, partnership, or corporation.

(e) **Inspector.** A person authorized by the Secretary to investigate and certify to shippers and other interested parties the grade, class, quality, and condition of rice in accordance with the regulations in this part.

(f) **Rice.** Any rice for which standards shall have been fixed and established by the Secretary.

(g) **Inspection certificate.** A certificate of the grade, class, quality, and/or condition of rice, issued by an inspector or rice supervisor under the Act.

(h) **Interested party.** A person financially interested in a transaction involved in a rice inspection or an appeal.

(i) **Regulations.** Regulations made under the Act by the Secretary.

(j) **Grade.** Grade according to the official rice standards of the United States.

(k) **Official rice standards of the United States.** Standards of grade, class, quality, and condition of rice promulgated and established under the Act by the Secretary.

(l) **Rice supervisor.** An officer or agent of the Bureau designated by the Chief of the Bureau whose duties include the supervision of the inspection, grading or analysis of rice, of the certification of grade, class, quality, and condition thereof, and the determination of appeals in accordance with the Act and regulations.

(m) **License.** A license issued under the Act by the Secretary to any person to inspect rice and to certificate the grade, class, quality, and condition thereof.

(n) **Authorized sampler.** A person authorized by an inspector, with the approval of a rice supervisor, to draw official samples of rice, or an employee of the Bureau assigned to perform sampling service.

(o) **Office of Federal Rice Supervision.** The place designated by the Chief of the Bureau from time to time as the headquarters of a rice supervisor.

(p) **Appeal.** An appeal taken to a rice supervisor pursuant to the regulations in this part from the inspection of any lot of rice which has been certificated by an inspector.*† [Reg. 1, sec. 2]

ADMINISTRATION

60.3 Chief of Bureau. The Chief of the Bureau is charged with the administration of the provisions of the Act and of the regulations in this part.*† [Reg. 2, sec. 1]

*†For statutory and source citations, see note to § 60.1.

INSPECTION SERVICE

60.4 Kind of service. Inspection of rice may be made according to grade, class, quality, and/or condition.*† [Reg. 3, sec. 1]

60.5 Who may obtain service. An application for inspection of rice may be made by any interested party or his authorized agent.*† [Reg. 3, sec. 2]

60.6 How to make application. Application for inspection may be made to any inspector in writing, orally, by telegraph or telephone. If made orally the inspector may require that it be confirmed in writing.*† [Reg. 3, sec. 3]

60.7 Form of application. Application for inspection of rice under the Act shall include the following information: (a) the date of application; (b) the identification and location of the rice; (c) the name and post-office address of the applicant and of the person, if any, making the application in his behalf; (d) the interest of the applicant therein; (e) the form of inspection desired; (f) if the rice has been inspected previously at the same place, a statement to that effect; and (g) such other information as the inspector may require or as may be deemed necessary by the Chief of the Bureau.*† [Reg. 3, sec. 4]

60.8 When application is deemed filed. An application shall be deemed filed when delivered to an inspector.*† [Reg. 3, sec. 5]

60.9 When application may be withdrawn. Any application for inspection may be withdrawn by the applicant at any time before the certificate is issued, upon payment of any expenses incurred in connection therewith.*† [Reg. 3, sec. 6]

60.10 When inspection may be refused. Inspection may be refused by the inspector for noncompliance with the Act or the regulations in this part. Such inspector shall immediately notify the applicant the reasons for such refusal. All expenses incurred in connection therewith may be charged to the applicant.*† [Reg. 3, sec. 7]

60.11 Authority of agent. Proof of the authority of any person applying for inspection on behalf of another may be required in the discretion of the inspector.*† [Reg. 3, sec. 8]

60.12 Basis of service. Inspection for grade, class, quality, and/or condition shall be based upon such standards as may be prescribed by the Secretary, and upon such additional tests as may be authorized by the Chief of the Bureau.*† [Reg. 3, sec. 9]

60.13 Date of inspection. In order to determine the date of inspection at any point for the purpose of the regulations in this part, each day shall be deemed to end at midnight, or at such time before midnight thereof as may be fixed and announced for the convenience of the inspectors and the trade at such point, with the approval of the rice supervisor in charge of the district in which such point shall be located.*† [Reg. 3, sec. 10]

60.14 Lot inspection. A lot inspection shall consist of taking a representative sample or samples of the rice, examining the same for grade, class, quality, or condition, as the case may be, and of issuing

a certificate therefor. No certificate shall be issued reciting the grade, class, quality, or condition of any rice unless a sample or samples of the rice covered by such certificate be drawn by the inspector or by an authorized sampler, and no such certificate shall be issued unless a representative sample or samples are obtained from all parts of the rice to be certificated in accordance with instructions issued by the Chief of the Bureau.

In case it shall appear that a material portion of a lot of rice is in any manner distinctly inferior to the remainder of the lot, a separate sample shall be taken from each portion, there shall be filed with each such sample a statement showing the quantity of each portion, and a separate inspection shall be made of each such portion.*† [Reg. 3, sec. 11]

60.15 Sample inspection. A sample inspection shall consist of examining a sample for its grade, class, quality, or condition, as the case may be, and of issuing a certificate therefor. Such sample shall be, in the opinion of the inspector, of sufficient size to permit accurate determination of the grade, class, quality, or condition to be certified.*† [Reg. 3, sec. 12]

60.16 Certificate; issuance. An official certificate shall be issued for each inspection of any lot or sample of rice to show the grade, class, quality, or condition, as the case may be; but in no case shall an inspector sign a certificate covering rice not inspected by him.*† [Reg. 3, sec. 13]

60.17 Certificate; form. Certificates shall be issued only in such form as approved by the Chief of the Bureau or by such officer of the Bureau as may be designated by him for the purpose.*† [Reg. 3, sec. 14]

60.18 Certificate; contents. Each inspection certificate issued under the Act by an inspector shall embody within its written or printed terms such information as may be required by the Chief of the Bureau or by such officer of the Bureau as may be designated by him for the purpose.

In addition to the matters required by the Chief of the Bureau, the inspection certificate may include only such additional remarks as may be approved by the Chief of the Bureau or by such officer of the Bureau as may be designated by him for the purpose.*† [Reg. 3, sec. 15]

60.19 Lot inspection certificate. A lot inspection certificate shall be issued to show the grade, class, quality, or condition, as the case may be, of a lot of rice.*† [Reg. 3, sec. 16]

60.20 Sample inspection certificate. A sample inspection certificate shall be issued to show the grade, class, quality, or condition, as the case may be, of a sample of rice. Each sample inspection certificate shall clearly state that it applies only to the sample described therein.*† [Reg. 3, sec. 17]

60.21 Factor analysis certificate. Upon request of an applicant a factor analysis certificate may be issued by an inspector to show the result of one or more factor analysis tests, according to the official rice standards of the United States.*† [Reg. 3, sec. 18]

*†For statutory and source citations, see note to § 60.1.

60.22 Equal-to-type certificate. Upon application of an interested party and upon compliance with the provisions of §§ 60.4–60.28, a rice inspection certificate may be issued by an inspector to state that the quality of a lot or a sample of rice is “equal to or better than” the quality of a type which has previously been placed on file and definitely identified in the office of the inspector, provided such inspection and certification meet the conditions set forth in either paragraphs (a) (1), (2), (3), and (4), (b), or (c) of this section.

(a) (1) The lot or sample to be certificated shall be equal to, or better than, the quality of the type according to all class, quality, and condition factors of the official rice standards of the United States, with the exception of moisture.

(2) At the time of filing the type with the inspector, the depositor shall specify and file in writing with the inspector a statement of the maximum moisture content of any rice which he proposes to have inspected or to deliver against such type.

(3) When the statement of moisture content filed by the depositor with the type specifies a maximum moisture content of 14.5 percent or less and when the lot or sample to be delivered or inspected against the type contains no more moisture than the maximum percentage so specified, the factor of moisture may be disregarded in making the certification.

(4) When the statement of moisture content filed by the depositor with the type specifies a maximum moisture content in excess of 14.5 percent and when the lot or sample to be delivered or inspected against the type contains no more moisture than the maximum percentage so specified, the certificate shall clearly state the maximum percentage of moisture specified by the depositor, also the actual moisture content of the lot or sample covered by the certificate.

(b) An equal-to-type certificate also may be issued to show that rice is “equal to or better than” a properly identified type according to one or more of the class, quality, and condition factors of the official rice standards of the United States or according to other authorized quality tests, provided the certificate clearly states the factors or tests used in making the inspection.

(c) An equal-to-type certificate also may be issued to show that rice is “equal to or better than” a properly identified type according to all of the class, quality, and condition factors of the official rice standards of the United States except for one or more such factors, provided the certificate clearly states the factors excepted in making the inspection.

All certificates issued under the provisions of this section shall clearly state the identity of the type.

In case any inspector finds that a lot or sample of rice offered for inspection under this section fails to meet the above requirements, the certificate issued pursuant to such inspection shall state that the rice is “not equal to type.”* [Reg. 3, sec. 19, R. & Regs., as amended Aug. 20, 1937, 2 F.R. 1440]

60.23 Milling-test certificates. Any inspector who has equipment available to him to perform milling tests may, upon application

of any interested party, and upon compliance with the provisions of §§ 60.4–60.28, make such tests and certificate the results, provided such equipment, and the method of use thereof, meet the requirements prescribed by the Chief of the Bureau for the area in which the rice is located.*† [Reg. 3, sec. 20]

60.24 Origin certificate. Upon application of an interested party, a rice inspection certificate may be issued by an inspector to state that any rice sampled or inspected by him is of United States origin provided he determines this to be the fact.* [Reg. 3, sec. 20 (a), R. & Regs., as added May 5, 1938, 3 F.R. 893]

60.25 Advance information. Upon request of an applicant, all or any part of the contents of any certificate issued to him may be telegraphed or telephoned to him at his expense.*† [Reg. 3, sec. 21]

60.26 Disposition of certificates. The original inspection certificate, immediately upon its issuance, shall be delivered or mailed to the applicant or a person designated by him. One copy shall be filed in the office of the inspector, and one or more copies forwarded to the Chief of the Bureau or his representative. Additional copies may be furnished to the applicant without charge if requested prior to the issuance of the certificate. Additional copies may be furnished in accordance with the provisions of § 60.61(d).*† [Reg. 3, sec. 22]

60.27 Superseded certificates; copies. No inspector shall issue, nor permit to be issued over his signature, any copy of an inspection certificate which has been superseded by a Federal appeal inspection certificate, without first notifying the district rice supervisor and securing his approval of such issuance.*† [Reg. 3, sec. 23]

60.28 Certificates; copies filed with rice supervisor. Each inspector shall, as soon as possible after inspecting and certifying any rice and not later than the close of business on the next following business day, file in, or transmit to, the Office of Federal Rice Supervision in the district in which the inspection was performed, a true copy of each certificate issued by him.*† [Reg. 3, sec. 24]

LICENSED INSPECTORS

60.29 Who may be licensed. Persons desiring a license to inspect rice shall make application to any rice supervisor and shall furnish the information required by § 60.30.*† [Reg. 4, sec. 1]

60.30 Application; requirements. Each application shall contain or be accompanied by (a) satisfactory evidence that the applicant (1) has passed his twenty-first birthday and (2) has had at least one year's experience as an inspector of rice of the kind for which a license is sought, or the equivalent of such experience; (b) satisfactory assurance that the applicant will be provided with the necessary means or facilities for inspecting and grading rice of the kind for which a license is sought; and (c) shall be signed by the applicant.*† [Reg. 4, sec. 2]

*†For statutory and source citations, see note to § 60.1.

60.31 Applicant to be examined for competency. Each applicant for a license shall, if so required by the Chief of the Bureau, be examined for the purpose of determining his competency. Such examination shall be held at a time and place and in such manner as may be prescribed by the Chief of the Bureau or by such officer of the Bureau as may be designated by him for the purpose.*† [Reg. 4, sec. 3]

60.32 Licensee shall be disinterested. No person licensed by the Secretary to inspect or grade rice, or employed by him in carrying out any of the provisions of the Act or of the regulations in this part shall, during the term of such license or employment, be interested, financially or otherwise, directly or indirectly, in the rice involved, or in any rice mill, or rice storage place, or in the merchandising of rice, nor shall he be in the employment of any person, corporation, or association, owning or operating any mill, storage place, merchandising company or other organization which handles rice commercially.*† [Reg. 4, sec. 4]

60.33 License; property of Bureau. Each license shall be the property of the Bureau. Whenever any license shall have been superseded, suspended, canceled, or revoked it shall be returned to the Chief of the Bureau.*† [Reg. 4, sec. 5]

60.34 Licenses; conditions governing issuance. Each license issued shall be on condition that the licensee will, during the term of his license, apply the standards correctly, and will comply with all the provisions of the Act and the regulations thereunder.*† [Reg. 4, sec. 6]

60.35 Suspension of license. Whenever he deems such action necessary the Chief of the Bureau or such officer of the Bureau as may be designated by him for the purpose, may suspend the license of any inspector by giving him notice to that effect, together with a statement of the reasons therefor.

A licensee will be permitted 7 days from the receipt of such notice and statement of reasons, within which to show cause, supported by any evidence he may wish to offer on his behalf, why his license should not be revoked.

After the expiration of said period, final action as to the disposition of the said license will be taken.*† [Reg. 4, sec. 7]

60.36 Violations to be reported. Each inspector shall immediately report to the rice supervisor of his district evidence coming to his knowledge tending to show:

- (a) That any provision of the Act or regulations has been violated;
- (b) That any rice, inspected, and certificated, or to be inspected and certificated, under the Act or regulations has been irregularly loaded, or so loaded or piled as to conceal evidently inferior rice.*† [Reg. 4, sec. 8]

60.37 Instructions by rice supervisors. Each inspector shall execute diligently all instructions for carrying out the Act and regulations issued to him, directly or indirectly, by a rice supervisor or by any officer of the Bureau engaged in administering the Act and regulations, and, upon request, shall advise such rice supervisor or

administrative officer, in full detail, of any facts regarding inspection services performed by him and the compensation received therefor.*† [Reg. 4, sec. 9]

60.38 Instructions by chief inspectors. No chief or supervising inspector, shall issue to inspectors under his supervision any instructions inconsistent with the provisions of the Act and the regulations in this part. Each inspector shall immediately report to his rice supervisor any instructions issued contrary to this section.*† [Reg. 4, sec. 10]

60.39 Inspection and certification; when required. Each inspector shall upon request, without discrimination, as soon as practicable, and upon reasonable terms, inspect any rice of the kind mentioned in his license, if such rice be offered and made accessible during customary business hours for such inspection, at a point where he performs service as an inspector. For each inspection, an official certificate shall be issued showing the grade, class, quality or condition, as the case may be.*† [Reg. 4, sec. 11]

60.40 Lot inspection to be based on representative sample. No inspector shall issue an inspection certificate for any lot of rice unless the inspection thereof be based upon a correct and representative sample of the lot and be made under conditions which permit the determination of its true grade, class, quality, or condition, as the case may be. Each inspector shall take proper precautions to insure that no sample be exposed to manipulation which would deprive it of its representative character from the time of its collection until the certificate is issued. No sample shall be deemed representative unless of the size and procured in accordance with the method prescribed in instructions issued by the Chief of the Bureau, or by such officer of the Bureau as may be designated by him for the purpose.*† [Reg. 4, sec. 12]

60.41 Lot certification; when prohibited. No inspector shall issue an inspection certificate for a lot of rice based upon a sample thereof drawn by a sampler who is not employed or authorized by him or his inspection department; or who is not an employee of the Bureau approved for the purpose; or who is interested, financially or otherwise, directly or indirectly, in the rice involved, or in any rice mill, or rice storage place, or in the merchandising of rice, nor shall he be in the employment of any person, corporation, or association owning or operating any mill, storage place, merchandising company, or other organization which handles rice commercially, or who the inspector knows, or has reason to believe, is incompetent.*† [Reg. 4, sec. 13]

60.42 Inspection; restrictions. No inspection shall be made of any rice which is to be loaded into a vessel, vehicle, or other container, if it appears to the inspector that the hold, compartment, or other enclosure into which the rice is to be loaded is in such condition as to contaminate the rice or to lower the grade.*† [Reg. 4, sec. 14]

60.43 Inspector to make records. Each inspector shall keep complete and correct records of all rice inspected by him, which records shall be open for inspection and examination by any rice super-

*†For statutory and source citations, see note to § 60.1.

visor or by any officer of the Bureau designated for the purpose by the Chief of the Bureau.*† [Reg. 4, sec. 15]

SAMPLERS

60.44 Authorized samplers. Each inspector may authorize samplers to draw official samples for him for inspection purposes under the following conditions:

(a) **Sampler shall be disinterested.** No sampler authorized to draw official samples for an inspector shall, during the term of such authorization, be interested, financially or otherwise, directly or indirectly, in the rice involved, or in any rice mill, or rice storage place, or in the merchandising of rice, nor shall he be in the employment of any person, corporation, or association owning or operating any mill, storage place, merchandising company or other organization which handles rice commercially.

(b) **Authorization to be approved by rice supervisor.** No authorization issued to any sampler by an inspector shall be valid unless approved by the rice supervisor.

(c) **Form of authorization.** Each such authorization shall be in the form required by the Chief of the Bureau or by such officer of the Bureau as may be designated by him for the purpose. Each such authorization shall be signed by the inspector issuing the same, shall bear, or be accompanied by, a statement signed by the sampler that he will perform sampling services in accordance with instructions issued by the Bureau, and it shall also be signed as approved by a rice supervisor.*† [Reg. 5, sec. 1]

60.45 Suspension or revocation of authorization. Each authorization shall be subject to suspension or revocation by the inspector issuing same or by any rice supervisor, upon its being established that the sampler is incompetent, that he is not acting in accordance with instructions, that he is not needed for service, that he has entered other employment that renders him unable to meet the requirement of § 60.44 (a), or for any other good reason. No sample drawn by a sampler after his authorization has been suspended or revoked shall be used by an inspector for inspection purposes.*† [Reg. 5, sec. 2]

60.46 Instructions to authorized samplers. Each authorized sampler shall act in accordance with instructions issued to him by the inspector issuing the authorization, except that no inspector shall issue any instructions to authorized samplers that are inconsistent with the Act, with the regulations in this part, or with special instructions issued by the Bureau.*† [Reg. 5, sec. 3]

APPEAL INSPECTION

60.47 When and by whom appeal may be taken. An application for an appeal inspection of a lot of rice may be made by any interested party who is dissatisfied with the determination stated in the original certificate. An appeal shall be taken (a) before the rice

leaves the place where the inspection appealed from was made, (b) before the identity of the rice has been lost, and (c) as promptly as possible, but not later than the close of business on the second business day following the date of the inspection appealed from; however, the rice supervisor may permit the filing of an appeal application after the time prescribed herein upon the showing of fraud, insufficient time, or for other good reason.*† [Reg. 6, sec. 1]

60.48 How to obtain appeal inspection. An appeal inspection may be obtained by the applicant or other interested party, upon filing a request for such appeal inspection in writing, or by telegraph, in the office of the rice supervisor in the district in which the original inspection was made; Provided, That in his discretion the officer designated in charge of Federal Rice Supervision may authorize the entertaining of an appeal by an Office of Federal Rice Supervision other than that having jurisdiction over the district in which the inspection appealed from was made.*† [Reg. 6, sec. 2]

60.49 Advance notice of appeal. Any party desiring to appeal may, in advance, transmit to the proper Office of Federal Rice Supervision, by telegraph, telephone, or otherwise, such information as may be necessary to enable a rice supervisor in such office to proceed to the examination of the rice involved.*† [Reg. 6, sec. 3]

60.50 Contents of appeal application. An application for an appeal signed by the appellant, shall state: (a) the identification and location of the rice at the time of taking the appeal; (b) the names and post-office addresses of all other parties interested in the rice involved, if any; and (c) such other information as may be required by the Office of Federal Rice Supervision in which such application is filed.*† [Reg. 6, sec. 4]

60.51 Inspection certificate; filing. The appellant may be required to file or cause to be filed, in the Office of Federal Rice Supervision mentioned in § 60.48, the inspection certificate for the rice involved issued by the inspector from whose inspection the appeal is taken if the same be in his possession. If such certificate be in the custody or control of the inspector, he shall upon request, immediately transmit or deliver it to said office.*† [Reg. 6, sec. 5]

60.52 Record of filing appeal. A record showing the date and place of filing an appeal application or other documents pertaining to an appeal shall be made immediately by the receiver thereof. Each application or other document shall be deemed filed in an Office of Federal Rice Supervision when delivered thereto.*† [Reg. 6, sec. 6]

60.53 When appeal may be dismissed. A rice supervisor may dismiss any appeal filed in his office for noncompliance with the regulations in this part, or if it shall appear (a) that the reasons stated in an application for an appeal inspection are frivolous or unsubstantial, or (b) that the quality or condition of the rice has undergone a material change since the original inspection, or (c) that the rice cannot be made accessible for a thorough examination and sampling of all parts of the rice inspected. Upon the dismissal or withdrawal of an appeal the inspection certificate filed therein shall be immedi-

*†For statutory and source citations, see note to § 60.1.

ately returned to the person by whom filed, or delivered upon his written order. No appeal may be withdrawn after the issuance of an appeal inspection certificate.*† [Reg. 6, sec. 7]

60.54 When appeal may be withdrawn. Any application for appeal inspection may be withdrawn by the applicant at any time before the appeal certificate has been issued, upon payment of any expense incurred in connection therewith.*† [Reg. 6, sec. 8]

60.55 Rice supervisor to determine appeals. The sample or samples of rice involved in an appeal, complying with § 60.60, shall be examined as soon as possible, such tests shall be applied as are necessary and the documents and all other evidence shall be carefully considered by the rice supervisor determining the appeal.*† [Reg. 6, sec. 9]

60.56 Appeal inspection certificates; issuance. Immediately after an appeal inspection has been made a certificate designated as "Appeal Inspection Certificate" shall be issued showing the grade, class, quality, or condition, as the case may be, assigned by the rice supervisor to the lot of rice involved, which certificate shall be the final appeal inspection certificate for the purpose of that inspection. Each appeal inspection certificate shall be numbered and shall, by number or otherwise, identify the certificate which it supersedes.*† [Reg. 6, sec. 10]

60.57 Appeal inspection certificates; disposition. The original of the appeal inspection certificate, issued by the rice supervisor and marked as such, shall be delivered to the party, or upon the written order of the party, who filed the appeal. Additional copies may be furnished to the appellant without charge if requested prior to the issuance of the certificate. A copy of each appeal inspection certificate marked as such shall be furnished to each interested party of record other than the party to whom, or upon whose order, the original appeal inspection certificate is issued. Additional copies may be furnished in accordance with the provisions of § 60.61(d).*† [Reg. 6, sec. 11]

60.58 Appeal certificate supersedes inspector's certificate. An appeal inspection certificate shall supersede the inspection certificate from which the appeal was taken and such superseded inspection certificate shall not thereafter represent the grade, class, quality, or condition, as the case may be, of the rice.*† [Reg. 6, sec. 12]

60.59 Right of appeal not to be impaired. No rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or other organization, nor any contract, agreement, or understanding, shall be ground for refusing to hear and determine any appeal taken in compliance with the Act and regulations in this part.*† [Reg. 6, sec. 13]

60.60 Appeal inspection to be based on representative sample. No appeal shall be determined except upon the basis of a representative sample or samples of the rice involved. Such samples shall be drawn by a person authorized for the purpose by either the Chief of

the Bureau or the rice supervisor in charge of the Office of Federal Rice Supervision in which the appeal is entertained. For the purpose of an appeal no sample shall be deemed representative unless of the size and procured in accordance with the method prescribed in instructions issued by the Chief of the Bureau or by such officer of the Bureau as may be designated by him for the purpose.*† [Reg. 6, sec. 14]

CHARGES FOR INSPECTION

60.61 Fees and charges. Fees and charges for inspection, appeal inspection, and certification as to grade, class, quality, or condition, as the case may be, shall be in accordance with paragraphs (a) to (d) of this section.

(a) Fees for inspections. For each inspection a fee according to a schedule of fees approved from time to time by the Chief of the Bureau shall be assessed against the applicant.

(b) Fees for appeal inspections. The fee for an appeal inspection shall be in the same amount as the fee assessed for the inspection from which the appeal is taken, Provided, That in the case of an appeal from an inspection for grade, no appeal fee will be assessed if the inspector's grade be changed.

(c) Charges for traveling expenses. Such additional charges may be made for traveling expenses and other items paid and incurred by an inspector or by the Bureau in the performance of inspection or appeal services involving travel, as will reimburse the inspector or the Bureau.

(d) Charges for copies of certificates. In addition to the copies of certificates provided for in § 60.26, additional copies of certificates may be furnished to the applicant or upon his order; and in the case of appeal inspection certificates provided for in § 60.57, additional copies may be furnished to any interested party of record in the appeal, or upon his order. For such additional copies a reasonable fee may be charged for each copy, but the maximum fee for each such copy shall not exceed twenty-five cents.*† [Reg. 7, sec. 1]

60.62 How fees and charges shall be paid. Fees and other charges for inspections shall be paid by the applicant in accordance with the directions on the fee bill furnished him by the inspector. Fees and other charges for appeal inspection shall be paid by the appellant to the U. S. Department of Agriculture through the rice supervisor in charge of an Office of Federal Rice Supervision in accordance with paragraph (a) of this section. Payment in advance may be required by the inspector or by the rice supervisor.

(a) Disposition of fees. Fees for inspections made by a salaried inspector acting exclusively for the Bureau shall be remitted promptly to the U. S. Department of Agriculture through the Bureau.

Fees for inspections made by a licensed inspector acting exclusively for the Bureau, less the percentage or amount thereof which he is allowed by the terms of his contract of employment as compensation

*†For statutory and source citations, see note to § 60.1.

for his services, shall be remitted promptly to the U. S. Department of Agriculture through the Bureau.

Fees for inspections made by an inspector acting under a cooperative agreement with the Bureau, a State, or other organization, shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted to the U. S. Department of Agriculture through the Bureau.

Fees assessed for appeal inspections shall be transmitted to the U. S. Department of Agriculture through the Bureau by the rice supervisor.

(b) Disposition of charges. Charges for traveling expenses, etc., other than fees, shall be disposed of in accordance with the terms of a cooperative agreement or in such manner as to reimburse the inspector or his inspection department for expenses actually incurred in performing inspection service, Provided, That any charges collected by a salaried inspector or rice supervisor acting exclusively for the Bureau shall be remitted promptly to the U. S. Department of Agriculture, through the Bureau.*† [Reg. 7, sec. 2]

MISCELLANEOUS

60.63 Fraud or misrepresentation. Any wilful misrepresentation or any deceptive or fraudulent practice made or committed by any applicant for inspection or appeal or any wilful violation of the regulations in this part may be deemed sufficient cause for debarring the person guilty thereof from any further benefits of the Act.*† [Reg. 8, sec. 1]

60.64 Publications. Publications under the Act and the regulations in this part shall be made in the service and regulatory announcements of the Bureau and such other media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 8, sec. 2]

60.65 Political activity. All inspectors authorized, either by appointment or license from the Secretary of Agriculture, to issue inspection certificates under the Act and the regulations in this part are forbidden, during the period of their appointment or license, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including temporary and cooperative employees, and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for dismissal in the case of appointees, and revocation of licenses in the case of licensees.*† [Reg. 8, sec. 3]

60.66 Identification. All inspectors shall have in their possession at all times, and be able to present upon request, appropriate means of identification.*† [Reg. 8, sec. 4]

PART 61—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (INSPECTION, SAMPLING, AND CERTIFICATION)

Sec.		Sec.	
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CROSS REFERENCE

Cottonseed warehouses, regulations: See Part 111.

DEFINITIONS

Section 61.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 61.1 to 61.42, inclusive, issued under the authority contained in 50 Stat. 425; 7 U.S.C., Sup., 414.

†The source of §§ 61.1 to 61.42, inclusive, (except for the amendments noted in the text,) is Rules and regulations of the Secretary of Agriculture governing the inspection, sampling, and certification of cottonseed sold or offered for sale for crushing purposes, July 30, 1937, 2 F.R. 1349.

61.2 Terms defined. As used throughout this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) **The Act.** The Act of Congress entitled "An Act making appropriations for the Department of Agriculture", * * * for the

fiscal year ending June 30, 1938 (50 Stat. 425; 7 U.S.C., Sup., 414), which makes provision

for enabling the Secretary of Agriculture to investigate and certify to shippers and other interested parties the class, quality, and condition of cotton, * * * and other perishable farm products * * * under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered.

(b) Custodian. Person who has possession or control of cottonseed or of samples of cottonseed, as agent, controller, broker, or factor, as the case may be.

(c) Owner. Person who through financial interest owns or controls, or has the disposition of either cottonseed or of samples of cottonseed.

(d) Bureau. Bureau of Agricultural Economics of the United States Department of Agriculture.

(e) Official cottonseed standards. The official standards of the United States for the grading, sampling, and analyzing of cottonseed sold or offered for sale for crushing purposes.

(f) Supervisor of cottonseed inspection. An officer of the Department of Agriculture designated as such by the Chief of the Bureau.

(g) Secretary. The Secretary of Agriculture of the United States.

(h) The Chief of the Bureau. The Chief of the Bureau of Agricultural Economics, United States Department of Agriculture.

(i) Regulations. Regulations made under the Act by the Secretary.

(j) License. A license issued under the Act by the Secretary.

(k) Licensed cottonseed chemist. A person licensed under the Act by the Secretary to make quantitative and qualitative chemical analyses of samples of cottonseed according to the official methods and to certificate the grade according to the official cottonseed standards.

(l) Licensed cottonseed sampler. A person licensed by the Secretary to sample and to handle cottonseed samples, to prepare official samples according to methods approved by the Chief of the Bureau and forward the same to a licensed chemist and to certificate the authenticity of such samples.

(m) Dispute. A disagreement between the parties as to the true grade of a sample of cottonseed analyzed and graded by a licensed chemist.

(n) Party. A party to a dispute.

(o) Cottonseed. The word "cottonseed" as used herein means the seed, after having been put through the usual and customary process known as cotton ginning, of any cotton produced within the continental United States.

(p) Commercial laboratory. An individual, firm, or corporation in which one or more persons are engaged in the chemical analysis of materials for the public.*† [Reg. 1, sec. 2]

ADMINISTRATIVE AND GENERAL

61.3 Chief of Bureau. The Chief of the Bureau is charged with the supervision on behalf of the United States Department of Agriculture of the performance of all duties arising in the administration of the Act.*† [Reg. 2, sec. 1]

61.4 Supervisor of cottonseed inspection. The Chief of the Bureau, whenever he deems necessary, may designate an officer of the Department of Agriculture as supervisor of cottonseed inspection who shall supervise the inspection and sampling of cottonseed and perform such other duties as may be required of him in administering the Act and the regulations in this part.*† [Reg. 2, sec. 2]

61.5 Regulations to govern. The inspection, sampling, analyzing, and grading of cottonseed in the United States pursuant to the Act shall be performed as prescribed in regulations approved from time to time by the chief of the bureau.*† [Reg. 2, sec. 3]

LICENSED COTTONSEED CHEMISTS

61.6 Application for license as cottonseed chemist; form.

(a) Application for licenses to analyze and grade cottonseed shall be made to the Chief of the Bureau on forms authorized for the purpose by him.

(b) Each such application shall be in English and shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by satisfactory evidence (1) that he has passed his twenty-fifth birthday and that he is an actual resident of the continental United States, (2) that he holds a degree in chemistry or chemical engineering from a recognized college or university and has had not less than three years' practical experience in laboratory work in which he shall have analyzed quantitatively and qualitatively samples of cottonseed, (3) in the absence of a degree from a recognized college or university, that he has had at least five years' practical laboratory experience, three years of which shall have been devoted chiefly to the analysis of samples of cottonseed, (4) that he will have no financial interest in or be in the employ of any one having a financial interest in any cottonseed oil mill or cotton ginning establishment, (5) that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as they may relate to him, (6) that he is an independent analytical chemist or an employee of a commercial analytical laboratory, (7) that he owns or has the use of all of the apparatus specified in the regulations established hereunder for the analysis and grading of cottonseed; and (8) such other information as the Chief of the Bureau may deem necessary.

(c) Every chemist licensed hereunder to analyze cottonseed and to certificate the grade thereof shall follow precisely the methods of analysis approved from time to time by the Chief of the Bureau.

(d) The applicant shall furnish such additional information as the Secretary or the Chief of the Bureau shall at any time find to be necessary to the consideration of his application.*† [Reg. 3, sec. 1]

*†For statutory and source citations, see note to § 61.1.

61.7 Examination of applicant. Each applicant for a license as a chemist and each licensed chemist shall, when requested, submit to an examination or test to show his ability to analyze and grade cottonseed.*† [Reg. 3, sec. 2]

61.8 Period of license; renewals. The period for which a license may be issued shall be from the first day of August until and including the thirty-first day of July following. Renewals shall be for not more than 1 year beginning with the first day of August of each year: Provided, That licenses issued on or after June 1 of each year shall be for the period ending on July 31 of the following year.*† [Reg. 3, sec. 3]

61.9 Conditions in licensing. It shall be a condition of the licensing of any chemist under § 61.6, and of the retention by him of a license, that during the active cotton season each year he shall be engaged in or in connection with the grading of cottonseed; that all cottonseed graded by him shall be analyzed and graded in accordance with the official cottonseed standards of the United States; that each sample of cottonseed received by him for analysis and grading shall be handled by him in the order of its receipt at his place of business; and that he shall not use his license or allow the same to be used for any improper purpose.*† [Reg. 3, sec. 4]

61.10 Fees for grading and certification. Whenever any chemist licensed under the Act and in accordance with the regulations in this part shall grade and/or certificate any cottonseed or samples in consideration of a stated fee, the fee charged shall be reasonable and shall be in accordance with a schedule previously submitted to, and approved by, the Chief of the Bureau.*† [Reg. 3, sec. 5]

61.11 Records of analyses; inspection of records. Each licensed chemist shall keep, or shall cause to be kept for him, for a period of least 1 year, a record of the analysis of each individual sample of cottonseed graded by him. Each licensed chemist shall permit any officer or agent of the Bureau, authorized by the Chief of the Bureau for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part.*† [Reg. 3, sec. 6]

61.12 Official and unofficial samples; analysis; certification. (a) Each official sample of cottonseed as received by a licensed chemist shall be assigned a laboratory number and shall be analyzed and the grade certificated in the order of its receipt.

(b) Certification of the grade of lots of cottonseed may be issued only upon samples certified by licensed samplers as official samples and received in good condition by licensed chemists.

(c) Certificates of the grade of unofficial samples of cottonseed may be issued upon samples received by licensed chemists if the samples are sufficient for proper analysis, have not been drawn by a licensed sampler and are not believed to be samples of the same seed represented by an official sample. Such certificates shall be plainly marked "Sample not official; grade applies to the sample only."

(d) No certificate of the grade of a sample of cottonseed shall be issued by a licensed chemist based on a sample the condition of which on receipt at the laboratory does not comply with the regulations in this part covering the preparation and forwarding of samples of cottonseed.*† [Reg. 3, sec. 7]

61.13 Grade certificate; form. Each grade certificate issued under the Act by a licensed chemist shall be in a form approved for the purpose by the Chief of the Bureau and shall embody within its written or printed terms

- (a) The caption "Licensed cottonseed chemist's certificate."
- (b) The serial number assigned to it.
- (c) Whether it is an original, a duplicate, or other copy.
- (d) The date and place of issuance.
- (e) A statement that the certificate is issued by a chemist licensed by the Secretary of Agriculture to analyze and certificate the grade of cottonseed.
- (f) A statement in accordance with the facts in each case, either (1) that the chemist knows the samples upon which his classification is based to be true and correct samples of the cottonseed involved; or (2) that the samples were received from a sampler licensed by the Secretary in proper condition; or (3) that the samples were not received from a licensed sampler.
- (g) The identification of each lot of cottonseed by the marks and notations by which the seed was identified at the time the sample was taken.
- (h) All analytical data required by the Chief of the Bureau.
- (i) The signature of the licensed chemist.

In addition, the grade certificate may include any other matter not inconsistent with the Act or the regulations in this part.

A copy of each certificate shall be mailed to the Chief of the Bureau, or to such officer as he may designate, within 36 hours after its issuance.*† [Reg. 3, sec. 8]

61.14 Reports of licensed chemists. Each licensed chemist shall from time to time when requested by the Bureau, make reports on forms furnished for the purpose by the Bureau bearing upon his activities as such licensed chemist.*† [Reg. 3, sec. 9]

61.15 Information of violations. Every person licensed under the Act shall immediately furnish the Chief of the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations has been violated.*† [Reg. 3, sec. 10]

61.16 Licensed chemist; suspension of license. Pending investigation the Secretary or the Chief of the Bureau may, whenever he deems necessary, suspend the license of a licensed chemist temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor submitted by the licensed chemist, the Chief of the Bureau may, without a hearing, suspend or revoke the license issued to such licensed chemist. The Secretary may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, suspend or revoke a license issued to

*†For statutory and source citations, see note to § 61.1.

a licensed chemist when such licensed chemist (a) has ceased to perform services as such chemist, (b) has knowingly or carelessly analyzed cottonseed improperly, (c) has violated or evaded any provision of the Act or the regulations thereunder so far as the same may relate to him, (d) has used his license or allowed it to be used for any fraudulent or improper purposes, or (e) has in any manner become incompetent or incapacitated to perform the duties of such licensed chemist. Before the license of any licensed chemist is finally suspended or revoked, such licensed chemist shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing.*† [Reg. 3, sec. 11]

61.17 Suspended license to be returned to Bureau. If a license issued to a licensed chemist is suspended, revoked, or canceled, such license shall be returned to the Bureau. At the expiration of any period of suspension of such license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed chemist to whom it was originally issued.*† [Reg. 3, sec. 12]

61.18 Duplicate license. Upon satisfactory proof of the loss or destruction of a license issued to a licensed chemist, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.*† [Reg. 3, sec. 13]

61.19 Unlicensed persons must not represent themselves as licensed. No person shall in any way represent himself to be a chemist licensed under the Act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the Act.*† [Reg. 3, sec. 14]

61.20 Review of grading of sample; procedure. In case of dispute in which a review is desired of the grading of any sample of cottonseed covered by a valid certificate issued by a licensed cottonseed chemist, application for review shall be filed or mailed within one week after the date of the original certificate. Whereupon the licensed chemist issuing the certificate shall immediately forward to such other licensed chemist or other person as may be designated by the Chief of the Bureau, the retained portion of the official sample, for the purpose of re-analysis. Should the grade found on re-analysis differ from the original by not more than plus or minus one full grade, the original grade shall be considered as the true grade. Should the re-analysis indicate a grade differing more than plus or minus one full grade from the original, all work sheets involved shall be submitted to the Chief of the Bureau or his designated agent who shall determine the correct grade.* [Reg. 3, sec. 15, R. & Regs., July 30, 1937, 2 F.R. 1349 as amended Aug. 13, 1937, 2 F.R. 1400]

61.21 Costs of review; payment. In case of review of the grade of any official sample of cottonseed the appellant party shall pay

the costs of re-analysis, payment for which shall accompany the application.*† [Reg. 3, sec. 16]

61.22 Information on grading to be kept confidential. Every person licensed under the Act as a licensed chemist shall keep confidential all information secured by him relative to cottonseed analyzed and graded by him. He shall not disclose such information to any person except to the owner or custodian of the seed in question, or to an authorized agent of the Chief of the Bureau.*† [Reg. 3, sec. 17]

LICENSED COTTONSEED SAMPLERS

61.23 Application for license as sampler; form. (a) Applications for licenses to sample cottonseed shall be made to the Chief of the Bureau of Agricultural Economics on forms furnished for the purpose by him.

(b) Each such application shall be in English and shall be signed by the applicant, shall be verified by him under oath or affirmation, administered by a duly authorized officer, and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-fifth birthday and that he is an actual resident of the continental United States, (2) satisfactory evidence of his experience in the handling and sampling of cottonseed, (3) a statement by the applicant that he agrees to comply with and abide by the terms of the law and the regulations in this part so far as they may relate to him, and with instructions issued from time to time by the Chief of the Bureau governing the sampling of cottonseed, and (4) such other information as the Chief of the Bureau may deem necessary.

(c) Every sampler shall include in his application to the Chief of the Bureau for a license a statement showing the fees, wages, or salary to be received by him as compensation for his work as a sampler of cottonseed.*† [Reg. 4, sec. 1]

61.24 Bonds of licensed samplers. (a) Each applicant for a license to sample cottonseed shall, as a condition to the granting thereof, execute and file with the Chief of the Bureau a good and sufficient bond to the United States to secure the faithful performance of his duties as a licensed sampler under the terms of the Act, as amended, and the regulations in this part. Said bond shall be in such form and amount, not less than \$1,000, and shall have such surety or sureties as shall be approved by the Chief of the Bureau, subject to service of process in suits on the bond within the State, district, or Territory, in which such licensee shall perform services as a licensed cottonseed sampler. Any person injured by the breach of any obligation to secure which a bond is given under this paragraph shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach.

(b) If the Chief of the Bureau finds that the existence of conditions warrants such action, there shall be added to the amount previously required under paragraph (a) of this section such additional amount as he shall deem necessary.*† [Reg. 4, sec. 2]

*†For statutory and source citations, see note to § 61.1

61.25 Period of license; renewals. The period for which a license may be issued under § 61.23 shall be from the first day of August until and including the thirty-first day of July following. Renewals shall be for 1 year, beginning with the first day of August of each year: Provided, That licenses or renewals issued on and after June 1 of any year shall be for the period ending on July 31, of the following year.*† [Reg. 4, sec. 3]

61.26 Renewal of license; bond. It shall be a condition of the renewal of any license hereunder that the licensed sampler shall file a new bond in the required amount with, and that such bond shall be approved by, the Chief of the Bureau or his authorized representative, Provided, That in the discretion of the Chief of the Bureau or his authorized representative a properly executed instrument in form approved by him amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the licensed sampler and otherwise complying with §§ 61.23–61.39 may be filed in lieu of a new bond.*† [Reg. 4, sec. 4]

61.27 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purpose of §§ 61.24–61.26 until it has been approved by the Chief of the Bureau or his authorized representative.*† [Reg. 4, sec. 5]

61.28 Examination of sampler. Each applicant for a license as a sampler and each licensed sampler whenever requested by an authorized agent of the Bureau, shall submit to an examination or test to show his ability properly to perform the duties for which he is applying for a license or for which he has been licensed, and each such applicant or licensee shall furnish the Bureau any information requested at any time in regard to his sampling of cottonseed.*† [Reg. 4, sec. 6]

61.29 License must be posted. Each licensed sampler shall keep his license conspicuously posted at the place where he functions as a sampler or in such other place as may be approved by the Bureau.*† [Reg. 4, sec. 7]

61.30 No discrimination in sampling. Each licensed sampler, when requested, shall without discrimination, as soon as practicable and upon reasonable terms, sample any cottonseed if the same be made available to him under conditions that will permit proper sampling. Each such licensee shall give preference to those who request his services as such over persons who request his services in any other capacity.*† [Reg. 4, sec. 8]

61.31 Equipment of sampler; contents of certificate. Each licensed sampler shall have available suitable triers or sampling tools, sample containers, scales, seed cleaners, seed mixers, and air-tight containers for enclosing and forwarding the official samples to licensed chemists, and with tags and samplers' certificates approved or furnished by the Chief of the Bureau or his representative for identifying the samples of cottonseed and for certifying the condition of the cottonseed represented by such samples. There shall be clearly written or printed on the face of each certificate (a) the number thereof; (b) a suitable caption; (c) the location of the cottonseed involved

and its point of origin; (d) the identification of the lot from which the sample was drawn; (e) the date on which the sample was drawn; (f) the gross weight of the original sample, the net weight of the cleaned sample, and whether on receipt the shipment was "hot" or fermented; (g) a statement indicating that the sample was drawn by a sampler licensed in accordance with the regulations in this part, as amended; and (h) the signature of the licensed sampler as such. The use of such tags and certificates shall be in conformity with instructions issued from time to time by the Chief of the Bureau.*† [Reg. 4, sec. 9]

61.32 Drawing and preparation of sample. The official sample taken from a lot of cottonseed by a licensed sampler shall be drawn, prepared, and identified in such manner as may be required by the Chief of the Bureau. Any conditions not fully indicated by the sample shall be specified by the licensed sampler in the certificate accompanying such sample.*† [Reg. 4, sec. 10]

61.33 Inspection of records of sampler. Each licensed sampler shall permit any authorized officer or agent of the Bureau to inspect at any time his books, papers, records, and accounts relating to the performance of his duties under §§ 61.23–61.39.*† [Reg. 4, sec. 11]

61.34 License may be suspended. Pending final action by the Secretary, a sampler's license may be suspended by the Chief of the Bureau or by any official by whom it may be countersigned whenever such official shall deem such action to be for the good of the service. Within ten days after any such suspension the licensee may file an appeal in writing to the Secretary, supported by any argument or evidence that he may wish to offer in his behalf.*† [Reg. 4, sec. 12]

61.35 Suspended license to be returned to Department. In case a license issued to a sampler is suspended or revoked such license shall be returned to the Department. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of beginning and termination of such suspension shall be endorsed thereon, it shall be returned to the person to whom it was originally issued, and it shall be posted as prescribed in § 61.29.*† [Reg. 4, sec. 13]

61.36 Duplicate license. Upon satisfactory proof of the loss or destruction of a license issued to a sampler hereunder, a new license may be issued under the same or new number.*† [Reg. 4, sec. 14]

61.37 Reports of licensed samplers. Each licensed sampler, when requested, shall make reports on forms furnished for the purpose by the Bureau bearing upon his activities as such licensee.*† [Reg. 4, sec. 15]

61.38 Unlicensed persons must not represent themselves as licensed samplers. No person shall in any way represent himself to be a sampler licensed under the Act, as amended, unless he holds an unsuspended and unrevoked license issued thereunder.*† [Reg. 4, sec. 16]

61.39 Information on sampling to be kept confidential. Every person licensed under the Act as a licensed sampler of cottonseed

*†For statutory and source citations, see note to § 61.1.

shall keep confidential all information secured by him relative to shipments of cottonseed sampled by him. He shall not disclose such information to any person except an authorized agent of the Chief of the Bureau.*† [Reg. 4, sec. 17]

FEES AND COSTS

61.40 Fee for sampler's examination. For the examination of an applicant for a license to sample and certificate official samples of cottonseed, the fee shall be \$5, but no additional charge shall be made for the issuance of a license. For each renewal of a sampler's license the fee shall be \$3.*† [Reg. 5, sec. 1]

61.41 Fee for examination for license as chemist. For the examination of an applicant for a license as a chemist to analyze and certificate the grade of cottonseed the fee shall be \$50, but no additional charge shall be made for the issuance. For each renewal of a chemist's license the fee shall be \$50.*† [Reg. 5, sec. 2]

61.42 Fees for certificates to be paid by licensee to Bureau. For each certificate of the grade of cottonseed issued by a licensed cottonseed chemist he shall pay 25 cents to the Bureau. A statement showing the number of certificates issued shall be rendered to the Bureau each month, the same to be accompanied by the appropriate remittance in the form of a certified check, draft, or post-office or express money order payable to the order of the United States Department of Agriculture.* [Reg. 5, sec. 3, R. & Regs., as amended Aug. 13, 1937, 2 F.R. 1400]

Subchapter D—Warehouse Regulations

PART 101--COTTON WAREHOUSES

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CHAPTER I—BUREAU OF AGRICULTURAL ECONOMICS § 101.1

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CROSS REFERENCES

Cotton classifications under United States Cotton Futures Act: See Part 27.
Cotton Standards: See Part 28.

DEFINITIONS

Section 101.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 101.1 to 101.92, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 101.1 to 101.92, inclusive, (except for the amendments noted in the text,) is Regulations for cotton warehouses, Department of Agriculture, Apr. 27, 1931. (SRA, BAE 126)

101.2 Terms defined. For the purpose of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) **The Act.** The United States Warehouse Act, approved August 11, 1916, as amended by Acts of Congress approved July 24, 1919, February 23, 1923, and March 2, 1931 (39 Stat. 486, 41 Stat. 266, 42 Stat. 1282, 46 Stat. 1463; 7 U.S.C. 241–273).

(b) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) **Secretary.** The Secretary of Agriculture of the United States.

(d) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(e) **Designated representative.** The Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

(f) **Regulations.** Rules and regulations made under the Act by the Secretary.

(g) **Department.** United States Department of Agriculture.

(h) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(i) **Linters.** As far as applicable the regulations in this part shall include linters.

(j) **Warehouse.** Any building, structure, or other protected inclosure in which cotton is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which cotton is or may be stored.

(k) **Warehouseman.** A person lawfully engaged in the business of storing cotton.

(l) **License.** A license issued under the Act by the Secretary.

(m) **Licensed warehouseman.** A warehouseman licensed as such under the Act.

(n) **Licensed warehouse.** A warehouse for the conduct of which a license has been issued.

(o) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(p) **Licensed classifier.** A person licensed under the Act to classify according to grade or otherwise and certificate the grade or other class of cotton.

(q) **Licensed weigher.** A person licensed under the Act to weigh and certificate the weight of cotton.

(r) **Cotton examiner.** An officer of the Department of Agriculture designated by the Chief of the Bureau for the purpose of hearing cotton appeals under regulation 9 (§§ 101.75–101.85).

(s) **Receipt.** A warehouse receipt.

(t) **Bale.** A bale or other package.

(u) **State.** A State, Territory, or District of the United States.

(v) **Licensed sampler.** A person, employed by a licensed warehouseman, licensed under the Act to draw samples from cotton stored in the licensed warehouse at which such person is employed.* [Reg. 1, sec. 2, SRA, BAE 126, Apr. 27, 1931, as amended Aug. 25, 1934]

WAREHOUSE LICENSES

101.3 Application forms. Applications for licenses under sections 4 and 9 of the Act (46 Stat. 1463, 1464; 7 U.S.C. 244, 248) and for amendments of licenses under section 5 of the Act (42 Stat. 1282; 7 U.S.C. 245) shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application.*† [Reg. 2, sec. 1]

101.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of cotton, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the intent of the Act for not issuing such license.*† [Reg. 2, sec. 2]

101.5 Net assets required. Any warehouseman conducting a warehouse licensed or for which application for license has been made, shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$5 per bale of the maximum number of bales that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000, and need not be more than \$100,000. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 101.12 (b).*† [Reg. 2, sec. 3]

101.6 License shall be posted. Immediately upon receipt of his license or of any modification or extension thereof under the Act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

101.7 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or cancel the license issued to such warehouseman. The Secre-

*†For statutory and source citations, see note to § 101.1.

tary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman, when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 101.89.*† [Reg. 2, sec. 5]

101.8 Return of suspended or revoked warehouse license. In case a license issued to a warehouseman terminates or is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 101.6; or in the discretion of the Chief of the Bureau a new license may be issued.*† [Reg. 2, sec. 6]

101.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same number.*† [Reg. 2, sec. 7]

101.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

101.11 Time of filing. Unless the warehouseman has previously filed with the Secretary the bond required by § 101.12, he shall file such bond within a time, if any, specified by the Secretary, or his designated representative, said bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

101.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with

this section, the amount of such bond shall be at the rate of \$5 per bale of the maximum number of bales that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for the said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required.

(b) In case of a deficiency in net assets under § 101.5, there shall be added to the amount of the bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency.

(c) In case the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount determined in accordance with paragraphs (a) and (b) of this section a further amount fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

101.13 Amendment to license. In case an application is made under § 101.3 for an amendment to a license and no bond previously filed by the warehouseman covers obligations arising under such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that each amendment will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within the time, if any, fixed in such notice, a bond complying with the Act. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

101.14 New bond required each year. Whenever a license has been issued for a period longer than one year, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary, or his designated representative, prior to the date on which said license would have expired had it been issued for but one year, subject to the provisions of § 101.13.*† [Reg. 3, sec. 4]

101.15 Approval of bond. No bond, amendment, or continuation thereof shall be accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary, or his designated representative.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

101.16 Form. (a) Every receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed

*†For statutory and source citations, see note to § 101.1.

terms the following: (1) the name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws; (4) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship; (5) the tag number given to each bale of cotton in accordance with § 101.31; (6) a statement conspicuously placed, whether or not the cotton is insured, and, if insured, to what extent, by the warehouseman, against loss by fire and lightning; (7) the words "Not Negotiable", or "Negotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; and (8) a blank space designated for the purpose in which the length of staple may be stated.

(b) Every receipt, whether negotiable or nonnegotiable, issued for cotton stored in a licensed warehouse shall specify a period, not exceeding one year, for which the cotton is accepted for storage under the Act and the regulations in this part, but, upon demand and the surrender of the old receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, so far as the available capacity of his warehouse then permits and upon such lawful terms and conditions as may be granted by him at such time to other depositors of cotton in the warehouse shall, if he then continue to act as a licensed warehouseman, either extend the old receipt by making an appropriate notation thereon or issue a new receipt for a further specified period not exceeding one year. Further extension of the storage period may be made annually by appropriate endorsement or by issuing a new receipt, provided it is first determined by the warehouseman that the cotton has not deteriorated and if it has that proper notation of the changed condition be made on the receipt, and provided the warehouseman's license is still in effect.

(c) Every negotiable receipt issued for cotton stored in a licensed warehouse shall, in addition to complying with the requirements of paragraphs (a) and (b) of this section, embody within its written or printed terms the following: (1) If the cotton covered by such receipt was classified by a licensed classifier or weighed by a licensed weigher a statement to that effect, and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on, the cotton covered by the receipt.

(d) Whenever the grade or other class of the cotton is required to be, or is, stated in a receipt issued for cotton stored in a licensed warehouse, such grade or other class shall be stated in the receipt in accordance with §§ 101.68–101.73 as far as applicable.

(e) If a warehouseman issue a receipt omitting the statement of grade on request of the depositor, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If licensed receipts are issued covering linters such receipts shall be clearly and conspicuously marked "Linters", and all references to cotton shall be eliminated effectively from the receipts.

(g) If a warehouseman issue a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.*† [Reg. 4, sec. 1]

101.17 Copies of receipts. If copies are made of receipts, all such copies, except those issued in lieu of the original in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." If copies are not made, then skeleton copies bearing the same numbers as the corresponding original receipts shall be made, but such skeleton copies need not be marked "Copy—Not Negotiable."*† [Reg. 4, sec. 2]

101.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the cotton represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 3]

101.19 Printing of receipts. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Chief of the Bureau, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

101.20 Partial delivery of cotton. If a warehouseman deliver a part only of a lot of cotton for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the cotton.*† [Reg. 4, sec. 5]

*†For statutory and source citations, see note to § 101.1.

101.21 Return of receipts before delivery of cotton. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cotton for which he has issued a negotiable receipt under the Act until such receipt has been returned to him and canceled; and shall not deliver cotton for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written acknowledgment thereof.*† [Reg. 4, sec. 6]

101.22 Omission of grade; no compulsion by warehouseman. No licensed warehouseman shall, directly or indirectly by any means whatever, compel or attempt to compel the depositor of any cotton in his warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 7]

DUTIES OF LICENSED WAREHOUSEMEN

101.23 Insurance; requirements. (a) When requested in writing by the depositor of cotton in a licensed warehouse, or by the holder of the receipt covering such cotton, to insure such cotton against loss or damage by fire, lightning, and/or flood, each licensed warehouseman shall secure in his own name such insurance under reporting forms of policies which automatically attach for the full value of such cotton, including daily changes of value through market fluctuations and changes in the quantity of such product from day to day, as soon as such cotton is placed in his legal custody, and he shall continue such insurance in effect so long as the cotton remains in his legal custody. Such insurance shall be covered by lawful policies issued by one or more insurance companies. Each warehouseman insuring cotton under the provisions of this section shall submit such reports to underwriters as may be required under the terms of such policies, and copies of such reports shall be submitted to the Department as it may require. If the warehouseman is unable to procure insurance to the extent requested, he shall, orally or by telegraph or by telephone, and at his own expense, immediately notify the person making the request of such fact. When insurance is not carried in the warehouseman's name, the receipt shall show that the cotton is not insured by the warehouseman. Nothing in this section shall be construed to prevent a licensed warehouseman from adopting a rule that he will insure all cotton stored in his warehouse, but if he elects to insure he shall accomplish such insurance through policies as above specified.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 101.6, and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice, stating briefly the conditions under which the cotton will be insured against loss or damage by fire, lightning, and/or flood.* [Reg. 5, sec. 1, SRA, BAE 126, as amended July 18, 1935, and Oct. 7, 1936]

101.24 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding

companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 2]

101.25 Warehouseman to collect and pay over insurance. Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 3]

101.26 Care of cotton in licensed warehouse. Each warehouseman shall at all times exercise such care in regard to cotton in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.*† [Reg. 5, sec. 4]

101.27 Care of other cotton and other commodities. If, at any time, a warehouseman shall handle or store cotton otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the cotton in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. Nonlicensed cotton shall be kept separate from licensed cotton.*† [Reg. 5, sec. 5]

101.28 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of receipts issued and canceled receipts, except that with the written consent of the Chief of the Bureau or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety, approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancelation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 6]

101.29 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the Bureau a copy of his rules, if any, and a schedule of the charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each licensed warehouseman shall keep exposed conspicuously in the place prescribed by § 101.6, and at such other place, accessible to the public, as the Chief of the Bureau or his

*†For statutory and source citations, see note to § 101.1.

representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 7]

101.30 Business hours. (a) Each licensed warehouse shall be kept open for the purpose of receiving cotton for storage and delivering cotton out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver cotton stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.*† [Reg. 5, sec. 8]

101.31 Numbered tags to be attached to bales. Each warehouseman shall, upon acceptance of any bale of cotton for storage, immediately attach thereto a numbered tag of good quality which shall identify the bale. Such tag either shall be made of reasonably heavy waterproof paper or linen, with reinforced eyelet or eyelets, and be attached to the bale with a flexible, rustproof wire, or shall be made of such other material and attached by such other means as shall be approved by the Chief of the Bureau or his representative. The tags shall be attached in numerical sequence or any series of sequence clearly distinguishable from each other.* [Reg. 5, sec. 9, SRA, BAE 126, as amended March 9, 1935]

101.32 Arrangement of stored cotton. Each warehouseman shall so store each bale of cotton for which a receipt under the Act has been issued that the tag thereon, required by § 101.31, is visible and readily accessible, and shall arrange all other cotton in his licensed warehouse so as to permit an accurate check thereof.*† [Reg. 5, sec. 10]

101.33 System of accounts. Each warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Bureau, which shall show for each bale of cotton the tag number mentioned in § 101.31, its weight, its class when its class is required to be, or is, ascertained, its location, the dates received for, and delivered out of, storage, and the receipts issued and canceled, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies.*† [Reg. 5, sec. 11]

101.34 Reports. Each licensed warehouseman shall, from time to time, when requested by the Chief of the Bureau, or his representative, make such reports, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse as the Chief of the Bureau may require.*† [Reg. 5, sec. 12]

101.35 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to such field offices of the Bureau as may be designated from time to time. For the purposes of this section, only such portion as the Bureau may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 13]

101.36 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Chief of the Bureau for each kind of report, an exact copy of each such report required to be submitted by such warehouseman.*† [Reg. 5, sec. 14]

101.37 Inspections and examinations of warehouses. Each licensed warehouseman shall permit any officer or agent of the Department, authorized by the Secretary for the purpose, to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 15]

101.38 Weighing apparatus. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for cotton stored in a licensed warehouse, shall be subject to examination by any officer or agent of the Department designated by the Chief of the Bureau for the purpose. If the Bureau shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any cotton for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 16]

101.39 Loose cotton. Each warehouseman shall keep his warehouse reasonably free of loose cotton, except in a space or container separate and apart from other cotton.*† [Reg. 5, sec. 17]

101.40 Excess storage. If at any time a warehouseman shall store cotton in his licensed warehouse in excess of the capacity thereof determined in accordance with § 101.12, such warehouseman shall so arrange the cotton as not to obstruct free access thereto and the proper use of sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the Chief of the Bureau of such excess storage and arrangement thereof.*† [Reg. 5, sec. 18]

101.41 Removal of cotton from storage. Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any cotton, for storage, from the licensed warehouse or a part thereof designated in the receipt for such cotton, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no other circumstances, unless it becomes absolutely necessary to protect the interests

*†For statutory and source citations, see note to § 101.1.

of holders of receipts, shall cotton be removed from the warehouse, and immediately upon any such removal the warehouseman shall notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 19]

101.42 Storage of wet and fire-damaged cotton. A warehouseman shall not place any bale of cotton that is excessively wet in contact with any other cotton in the licensed warehouse. A warehouseman shall not store in the same compartment with cotton that has not been damaged by fire any cotton that has been damaged by fire until the risk of fire therein has passed and the fire-damaged cotton has been removed from the bale, and then he shall not store it in contact with cotton that has not been so damaged.*† [Reg. 5, sec. 20]

101.43 Cotton handling; storage; injuries. A warehouseman shall not handle or store cotton in such manner as will injure or damage it, or in any part of the warehouse in which it is likely to be injured or damaged by excessive moisture, or otherwise.*† [Reg. 5, sec. 21]

101.44 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 22]

101.45 Signatures on receipts to be filed with Department. Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.*† [Reg. 5, sec. 23]

101.46 Signs on field warehouses. (a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee, (2) the name of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "Public Warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part subject to the approval of the Bureau.

(d) Immediately upon the expiration or suspension or revocation of a license all signs required under this section shall be removed from the warehouse.

(e) No sign other than that required by this section shall remain on a licensed warehouse.*† [Reg. 5, sec. 24]

101.47 Certificates to be filed with warehouseman. When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman.*† [Reg. 5, sec. 25]

101.48 Drawing of samples. Each warehouseman shall have in his employ at all times one or more licensed samplers whose duty it shall be to draw samples from any cotton stored in the licensed warehouse if the owner of such cotton or any person having a legal right to have such cotton sampled requests that samples be drawn. When directed by the Chief of Bureau such requests shall be in writing. Such samplers shall perform their duties under the sole supervision and at the direction of the licensed warehouseman and the samples shall be drawn in accordance with § 101.72.* [Reg. 5, sec. 26, SRA, BAE 126, as added Aug. 25, 1934]

101.49 Samples; drawing and marking; how. All samples drawn from cotton stored in a licensed warehouse shall be drawn by licensed samplers in the employ of the licensed warehouseman except when such service is performed by cotton exchange inspection bureaus in accordance with the regulations of the Secretary under the Cotton Futures Act of August 11, 1916 (39 Stat. 476; 26 U.S.C. 1090–1106), as amended, and the Cotton Standards Act of March 4, 1923 (42 Stat. 1517; 7 U.S.C. 51–65), as amended. Each sample shall be appropriately marked to show the tag number of the bale of cotton from which it was drawn, the date of sampling, and the license number of the sampler. A record of the sampling, including the written request, if any, of the owner of the cotton or the person having a legal right to have such cotton sampled, shall be kept by the licensed warehouseman as a part of the warehouse records.* [Reg. 5, sec. 27, SRA, BAE 126, as added Aug. 25, 1934]

CROSS REFERENCE: For regulations under the Cotton Futures Act and the Cotton Standards Act, see Parts 27 and 28.

FEES

101.50 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license or amended license issued to a sampler, classifier, and/or weigher.* [Reg. 6, sec. 1, SRA, BAE 126, as amended Aug. 25, 1934]

101.51 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of \$10 for each 1,000 bales of the storage capacity, or fraction thereof, determined in accordance with § 101.12 (a), but in no case less than \$10 nor more than \$200, and, for each re-examination or reinspection applied for by such warehouseman, a fee, based on the extent of the re-examination or reinspection, proportioned to, but not greater than, that prescribed for the original examination or inspection.*† [Reg. 6, sec. 2]

*†For statutory and source citations, see note to § 101.1.

101.52 Advance deposit. Before any warehouseman's license or amendment thereto, or any sampler's, classifier's and/or weigher's license is granted, or an original examination or inspection, or re-examination or reinspection, applied for by a warehouseman, is made pursuant to the regulations in this part, the warehouseman, sampler, classifier, and/or weigher, shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of the "United States Department of Agriculture."* [Reg. 6, sec. 3, SRA, BAE 126, as amended Aug. 25, 1934]

101.53 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 101.52 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED CLASSIFIERS AND LICENSED WEIGHERS

101.54 Sampler's, classifier's, and weigher's application. (a) Applications for licenses to sample, classify and/or weigh cotton under section 11 of the Act (46 Stat. 1464; 7 U.S.C. 252) shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him, under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which cotton sought to be sampled, classified and/or weighed under such license is or may be stored; (2) a statement from the warehouseman conducting such warehouse showing whether or not the applicant is competent and is acceptable to such warehouseman for the purpose; (3) satisfactory evidence that he is competent to sample, classify and/or weigh cotton; (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him; and (5) such other information as the Chief of the Bureau may deem necessary; Provided, That when an application for a license to classify cotton is filed by a person who does not intend to classify cotton for any particular licensed warehouseman but who does intend to classify cotton stored or to be stored in a licensed warehouse and to issue class certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued

to cover such cotton, it shall not be necessary to furnish such statement as is required herein.

(c) For the purpose of classifying cotton under the regulations in this part, each licensed classifier who holds an unsuspended or unrevoked license under the Cotton Standards Act of March 4, 1923, and regulations thereunder to classify cotton and certificate the grade thereof shall be deemed competent and a license may be issued to him under the United States Warehouse Act upon furnishing the information required by paragraph (b) of this section except (3).

(d) The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

(e) A single application may be made by any person for a license as a sampler, classifier and weigher upon complying with all the requirements of this section.* [Reg. 7, sec. 1, SRA, BAE 126, Apr. 27, 1931, as amended Aug. 25, 1934]

101.55 Examination of applicant. Each applicant for a license as a sampler, classifier and/or weigher and each licensed sampler, classifier and/or weigher shall, whenever requested by an authorized agent of the Department designated by the Chief of the Bureau, for the purpose, submit to an examination or test to show his ability to properly sample, classify or weigh cotton, as the case may be, and shall also make available for inspection copies of the standards of classification or the weighing apparatus as the case may be, used or to be used by him.* [Reg. 7, sec. 2, SRA, BAE 126, as amended Aug. 25, 1934]

101.56 Posting of license. Each licensed classifier shall keep his license conspicuously posted in the office where all or most of the classifying is done, and each licensed sampler and/or weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by a representative of the Bureau.* [Reg. 7, sec. 3, SRA, BAE 126, as amended Aug. 25, 1934]

101.57 Duties of classifier and weigher. Each licensed sampler, classifier and/or weigher, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, sample, classify and/or weigh and deliver the sample or certificate the class and/or weight of cotton stored or to be stored in a licensed warehouse for which he holds a license if such cotton be offered to him under such conditions as permit proper sampling or inspection and the determination of the class or weight thereof; Provided That all cotton shall be sampled by a licensed sampler at the direction and under the supervision of the licensed warehouseman, except as permitted by § 101.49. Each such licensed sampler, classifier and/or weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No class certificate or weight certificate shall be issued under the Act for cotton not stored or not to be stored in a licensed warehouse, nor

*For statutory and source citations, see note to § 101.1.

shall cotton not stored in a licensed warehouse be sampled by a licensed sampler acting as such.* [Reg. 7, sec. 4, SRA, BAE 126, as amended Aug. 25, 1934]

101.58 Class certificates; form. (a) Each class certificate issued under the Act by a licensed classifier shall be in a form approved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (1) the caption "Cotton class certificate"; (2) whether it is an original, a duplicate, or other copy; (3) the name and location of the licensed warehouse in which the cotton is or is to be stored; (4) the date of the certificate; (5) the location of the cotton at the time of classification; (6) the identification of each bale of cotton by the tag number given to the bale in accordance with § 101.31 or if there be no such tag number by other marks or numbers; (7) the grade or other class, except length of staple, of each bale of cotton covered by the certificate, in accordance with §§ 101.68–101.73, as far as applicable, and the standard or description in accordance with which the classification is made; (8) a blank space designated for the purpose in which the length of staple may be stated; (9) that the certificate is issued by a licensed classifier under the United States Warehouse Act and regulations thereunder; and (10) the signature of the licensed classifier. In addition, the class certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.

(b) Class certificates issued under the Cotton Standards Act of March 4, 1923 (42 Stat. 1517; 7 U.S.C. 51–65), shall be deemed sufficient for the purposes of the Warehouse Act and the regulations in this part, provided the person issuing such certificates holds unsuspended and unrevoked licenses under both the Cotton Standards Act and the Warehouse Act.*† [Reg. 7, sec. 5]

101.59 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (a) the caption "Cotton weight certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cotton is or is to be stored; (d) the date of the certificate; (e) the location of the cotton at the time of weighing; (f) the identification of each bale of cotton by the tag number given to the bale in accordance with § 101.31 or if there be no such tag number by other marks or numbers; (g) the gross weight of the cotton and, if the cotton be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact to which may be added the weigher's estimate of the number of pounds which should be allowed for such condition; (h) that the certificate is issued by a licensed weigher under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

101.60 Combined class and weight certificate. The class and weight of any cotton, ascertained by a licensed classifier and a licensed weigher, may be stated on a certificate meeting the combined requirements of §§ 101.58, 101.59 if the form of such certificate shall have been approved for the purpose by the Chief of the Bureau.*† [Reg. 7, sec. 7]

101.61 Copies of certificates to be kept. Each licensed classifier and each licensed weigher shall keep for a period of one year in a place accessible to interested persons a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the cotton covered by the certificate is stored.*† [Reg. 7, sec. 8]

101.62 Licensees to permit and assist in inspection. Each licensed sampler, classifier, and/or weigher shall permit any officer or agent of the Department authorized by the Secretary for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the licensed warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 101.37 as far as any such inspection or examination relates to the performance of the duties of such licensed sampler, classifier, and/or weigher under the Act and the regulations in this part.* [Reg. 7, sec. 9, SRA, BAE 126, as amended Aug. 25, 1934]

101.63 Reports. Each licensed sampler, classifier, and/or weigher shall, from time to time, when requested by the Chief of the Bureau, make reports, on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed sampler, classifier, and/or weigher.* [Reg. 7, sec. 10, SRA, BAE 126, as amended Aug. 25, 1934]

101.64 Licenses; suspension or revocation. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of a sampler, classifier, and/or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by a licensed sampler, classifier, and/or weigher, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such licensed sampler, classifier, and/or weigher. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section suspend or revoke a license issued to a licensed sampler, classifier, and/or weigher when such licensed sampler, classifier, and/or weigher (a) has ceased to perform services as such sampler, classifier, and/or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such licensed sampler, classifier, and/or weigher. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions mentioned under (a) or (b) exist, it shall be the duty of such warehouseman to notify, in writing, the Chief of the Bureau. Before the license of any licensed sampler, classifier, and/or weigher is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such

*†For statutory and source citations, see note to § 101.1.

licensed sampler, classifier, and/or weigher shall be furnished by the Secretary or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 101.89.* [Reg. 7, sec. 11, SRA, BAE 126, as amended Aug. 25, 1934]

101.65 Suspended or revoked licenses; return; termination of license. (a) In case a license issued to a sampler, classifier, and/or weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be endorsed thereon, and it shall be returned to the licensed sampler, classifier, and/or weigher to whom it was originally issued, and it shall be posted as prescribed in § 101.56.

(b) Any license issued, under the Act and the regulations in this part, to a sampler, classifier, and/or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked or canceled. Thereupon the license of such sampler, classifier, and/or weigher shall be returned to the Secretary. In case such licensee shall apply to other warehouses, the Secretary, or his designated representative, shall issue to him a new license, omitting the names of the warehouses covering which licenses have been revoked. Such new license shall be posted as prescribed in § 101.56.* [Reg. 7, sec. 12, SRA, BAE 126, as amended Aug. 25, 1934]

101.66 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to a licensed sampler, classifier, and/or weigher, a duplicate thereof may be issued under the same number.* [Reg. 7, sec. 13, SRA, BAE 126, as amended Aug. 25, 1934]

101.67 Unlicensed classifiers and weighers. No person shall in any way represent himself to be a sampler, classifier, and/or weigher licensed under the Act unless he holds an unsuspended and unrevoked license issued under the Act.* [Reg. 7, sec. 14, SRA, BAE 126, as amended Aug. 25, 1934]

COTTON CLASSIFICATION

101.68 Statement of class. Whenever the grade or other class of cotton is required to be, or is, stated for the purpose of the Act or the regulations in this part it shall be stated in accordance with §§ 101.68–101.73 as far as applicable.*† [Reg. 8, sec. 1]

101.69 Official cotton standards of the United States. The official cotton standards of the United States, established and promulgated under the United States Cotton Standards Act of March 4, 1923 (42 Stat. 1517; 7 U.S.C. 51–56), within their scope, are hereby adopted as the official cotton standards for the purposes of the Act and the regulations in this part.*† [Reg. 8, sec. 2]

101.70 Defective cotton; designation; terms defined. (a) Cotton that, (1) because of the presence of extraneous matter of any

character or irregularities or defects, is reduced in value below that of Good Ordinary, (2) is below the grade of Good Ordinary, (3) is below the grade of Low Middling, if tinged, (4) is below the grade of Middling, if stained, (5) is linters, (6) is less than seven-eighths of an inch in length of staple, (7) is of perished staple, (8) is of immature staple, (9) is gin cut, (10) is reginned, (11) is repacked, (12) is false packed, (13) is mixed packed, or (14) is water packed, shall be designated as such. In the case of (1) of this paragraph the particular extraneous matter or irregularities or defects shall be stated.

(b) If cotton be reduced in value, by reason of the presence of extraneous matter of any character or irregularities or defects, below its grade according to the official cotton standards of the United States, except when the cotton is of a quality or condition specified in paragraph (a) of this section, the grade to the value of which it is so reduced and the quality or condition which so reduces its value shall be determined and stated.

(c) For the purposes of this section, the following terms shall be construed, respectively, to mean:

Cotton of perished staple. Cotton that has had the strength of fiber as ordinarily found in cotton destroyed or unduly reduced through exposure to the weather either before picking or after baling, or through heating by fire, or on account of water packing, or by other causes.

Cotton of immature staple. Cotton that has been picked and baled before the fiber has reached a normal state of maturity, resulting in a weakened staple of inferior value.

Gin-cut cotton. Cotton that shows damage in ginning through cutting by the saws, to an extent that reduces its value more than two grades.

Reginned cotton. Cotton that has passed through the ginning process more than once and cotton that, after having been ginned, has been subjected to a cleaning process and then baled.

Repacked cotton. Cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots collected and rebaled.

False packed cotton. Cotton in a bale (1) containing substances entirely foreign to cotton, (2) containing damaged cotton in the interior with or without any indication of such damage upon the exterior, (3) composed of good cotton upon the exterior and decidedly inferior cotton in the interior in such manner as not to be detected by customary examination—that is, a plated bale, or (4) containing pickings or linters worked into the bale.

Mixed packed cotton. Cotton in a bale which shows a difference of more than two grades between samples drawn from the heads and the top and bottom sides of the bale, or which shows a difference in color exceeding two grades in value between such samples.

Water packed cotton. Cotton in a bale that has been penetrated by water during the baling process, causing damage to the fiber, or a bale that through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior.*† [Reg. 8, sec. 3]

*†For statutory and source citations. see note to § 101.1.

101.71 Class based on inspection and sample. Whenever the grade or other class of cotton is required to be, or is, stated by a warehouseman or a classifier for the purposes of the Act or the regulations in this part, it shall be based upon a careful inspection of and a sample properly drawn from the cotton.*† [Reg. 8, sec. 4]

101.72 Samples. No sample taken from a bale of cotton of the square type shall be deemed to be properly drawn for the purposes of the regulations in this part unless it be composed of cotton drawn by the customary methods from both sides of the bale and weigh not less than 4 ounces, except that, in any State where provision is made by law for the taking of representative samples at the gin, samples complying with such law may, in the discretion of the Secretary, or his designated representative, be used in determining the grade or other class of the cotton from which such samples were taken.*† [Reg. 8, sec. 5]

101.73 Class to be based on low side. In case the cotton drawn from one portion of a bale is lower in class than that drawn from another portion of the bale, except as otherwise provided by the regulations in this part, the class assigned to the bale shall be that of the cotton taken from the portion showing the lower class.*† [Reg. 8, sec. 6]

101.74 Access to official cotton standards. Each licensed warehouseman and each licensed classifier shall keep himself provided with, or have access to, a set of practical forms of the official cotton standards of the United States, or such parts thereof as the Chief of the Bureau may deem necessary for use in the locality in which the licensed warehouse is located.*† [Reg. 8, sec. 7]

COTTON APPEALS

101.75 Who may appeal. Whenever the grade or other class of cotton, for which official cotton standards of the United States are in effect, is stated on a receipt or a cotton class certificate issued under the Act and the regulations in this part, and a question arises as to the true grade or other class of such cotton, any person having an interest in the cotton may take an appeal for the determination of such question.*† [Reg. 9, sec. 1]

101.76 Complaint. In order to take such an appeal a complaint in writing in accordance with § 101.77 shall be filed with a duly authorized cotton examiner or a board of cotton examiners, or with the Chief of the Bureau who shall designate a cotton examiner or a board of cotton examiners for the purpose of disposing of such complaint.*† [Reg. 9, sec. 2]

101.77 Contents of complaint. Such complaint shall be in English and shall state (a) the name and post-office address of the complainant and the nature of his interest in the cotton, (b) the name and post-office address of the holder of the receipt, if he be not the complainant, and of any other interested party, (c) the name and location of the licensed warehouse in which the cotton is

stored, the tag number assigned to each bale of cotton involved in the appeal in accordance with § 101.31, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor, (d) the grade or other class assigned by the licensed classifier, if any, (e) the grade or other class, different from that assigned by the licensed warehouseman, which is contended for by any interested party, (f) whether, within complainant's knowledge, any appeal involving the same cotton previously has been taken, and if so, an appropriate identification of such other appeal, (g) if samples have been agreed upon and are submitted in accordance with § 101.79 (b), a statement thereof. The complainant shall file with his complaint, when practicable, or before the issuance of the cotton appeal certificate, in the appeal, the warehouse receipt or class certificate, if any, covering the cotton involved in the appeal. When such receipt or certificate is not filed a definite statement indicating why such papers are not produced shall be filed.*† [Reg. 9, sec. 3]

101.78 Proof of agent's authority. In case a complaint is filed under §§ 101.75–101.77 by a person purporting to act in behalf of another person, the Chief of the Bureau, or the cotton examiner or the board of cotton examiners with whom it was filed, may, if considered necessary, require proof of the authority of such person to file the complaint.*† [Reg. 9, sec. 4]

101.79 Determination of appeals; samples. (a) Appeals taken hereunder shall be determined upon the basis of samples of the cotton involved which have been drawn and submitted in accordance with this section.

(b) The complainant may submit samples of the cotton involved which have been agreed upon by the licensed warehouseman in whose warehouse the cotton is stored and the interested parties other than such warehouseman, or have been drawn by a disinterested person selected for the purpose by the warehouseman and such parties. Such samples, when drawn from cotton to which § 101.72 applies, shall be drawn in accordance with said section.

(c) If samples which have been submitted pursuant to paragraph (b) of this section be deemed unsatisfactory, the cotton examiner or board of cotton examiners by whom the appeal is heard or the Chief of the Bureau may require the submission of new samples in accordance with said paragraph (b).

(d) In case samples are not submitted in accordance with paragraph (b) or (c) of this section, the Chief of the Bureau, the cotton examiner, or board of cotton examiners by whom the appeal is heard may dismiss the appeal as provided in § 101.80, or samples may be drawn from the cotton involved by a cotton examiner or by a disinterested person designated for the purpose by the cotton examiner or the board of cotton examiners by whom the appeal is heard or by the Chief of the Bureau, and the complainant shall cause the cotton to be made accessible for the purpose of drawing such samples.*† [Reg. 9, sec. 5]

*†For statutory and source citations, see note to § 101.1.

101.80 Dismissal of appeals. The Chief of the Bureau or the cotton examiner or board of cotton examiners by whom an appeal is heard may dismiss such appeal upon request of the complainant, or for noncompliance with the regulations in this part, or if it be found that the appeal was not taken in good faith. In case of an appeal filed in the first instance with a cotton examiner, a dismissal upon request of the complainant shall be made only before notice of grade or other class as provided in § 101.81 is issued.*† [Reg. 9, sec. 6]

101.81 Cotton appeal certificate. When an appeal filed with a board of cotton examiners has been determined, it shall immediately issue a cotton appeal certificate. When an appeal has been determined by a cotton examiner he shall issue a notice, a copy of which shall be sent by him to all parties shown by the record of the appeal to have an interest therein. In such notice the grade or other class assigned by him to the cotton involved in the appeal shall be stated, and any such interested party shall have a reasonable time, fixed in such notice, within which he may request of the Chief of the Bureau a review of the appeal by a board of cotton examiners. In case such request is not filed with such cotton examiner in the time fixed therefor, or in case within such time every such interested party waives in writing a review by a board of cotton examiners, the cotton examiner shall immediately issue a cotton appeal certificate showing the grade or other class assigned to the cotton by him. In case a request under this section for a review of an appeal is filed within the time fixed for the filing of such request, the cotton examiner shall note in his records the time of such filing and shall immediately notify the Chief of the Bureau, who shall cause the appeal to be reviewed and a cotton appeal certificate issued showing the grade or other class assigned upon such review. Immediately upon the issuance of a cotton appeal certificate under this section, the original thereof, together with any receipt covering such cotton filed in the appeal, shall be sent to the licensed warehouseman concerned, and a copy shall be sent to each other person shown by the record of the appeal to be interested therein.*† [Reg. 9, sec. 7]

101.82 Expenses paid by complainant. All expenses for the transmission of communications from the complainant, for telegraph and telephone toll charges on messages addressed to him, and for drawing and submitting samples required by § 101.79, including such traveling expenses, if any, incurred in accordance with the fiscal regulations of the Department as the Chief of the Bureau may deem proper, shall be borne by the complainant in the appeal in connection with which such expenses were incurred.*† [Reg. 9, sec. 8]

101.83 Advance deposit by complainant. If required by the cotton examiner or board of cotton examiners by whom the appeal is heard, the complainant shall make an advance deposit to cover the expenses payable by him under § 101.82. Such deposit shall be in an amount fixed by the cotton examiner or board of cotton examiners,

and shall be in the form of a check, certified if required by the Chief of the Bureau or a post-office or express money order, payable to the order of "Disbursing Clerk, Department of Agriculture." As soon as possible after the determination of an appeal in connection with which any such advance deposit shall have been made, the Chief of the Bureau shall furnish the disbursing clerk of the Department with a statement of the expenses, if any, chargeable against such advance deposit. Thereupon the disbursing clerk shall return to the person making the advance deposit as much thereof as shall not be required for the payment of such expenses.*† [Reg. 9, sec. 9]

101.84 New warehouse receipt. Upon demand by the lawful holder of a receipt for cotton involved in an appeal under §§ 101.75–101.85, the licensed warehouseman shall surrender to such holder the original cotton appeal certificate issued in such appeal, and, if the grade or other class shown by such certificate be different from that shown by the receipt, shall, upon the return of the old receipt, issue a new receipt stating the grade or other class shown by such cotton appeal certificate.*† [Reg. 9, sec. 10]

101.85 Disposition of samples. Samples submitted in appeals hereunder may be used for the purposes of the Department or disposed of in accordance with the property regulations of the Department, and the proceeds, if any, covered into the Treasury of the United States as miscellaneous receipts, or may, at any time, in the discretion of the Chief of the Bureau, be returned to the complainant at his expense.*† [Reg. 9, sec. 11]

MISCELLANEOUS

101.86 Bonds required. Every person applying for a license, or licensed, under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248), shall, as such, be subject to all portions of the regulations in this part, except § 101.5, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of cotton and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 101.11, 101.12, file with the Secretary a single bond meeting the requirements of the Act and regulations, in such form, and in such amount not less than \$5,000, as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of cotton and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any renewals or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative,

*†For statutory and source citations, see note to § 101.1.

shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

101.87 Publications. Publications under the Act and the regulations in this part shall be made in such media as the Chief of the Bureau may from time to time designate.*† [Reg. 10, sec. 2]

101.88 Information of violations. Every person licensed under the Act shall immediately furnish the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

101.89 Procedure in hearings. For the purpose of a hearing under the Act or the regulations in this part, except relating to appeals, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary or his designated representative. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or his designated representative. Every written entry in the records of the Department made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary, or his designated representative, for consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

101.90 One document and one license to cover several products. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.*† [Reg. 10, sec. 5]

101.91 Assets and bond; combination warehouses. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the great-

est amount of net assets and of fees if the full capacity of the warehouse was used for its storage.*† [Reg. 10, sec. 6]

101.92 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 7]

PART 102—GRAIN WAREHOUSES

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*†For statutory and source citations, see note to § 101.1.

Sec.		Sec.	
102.67	Weight certificate.	102.92	Advance deposit; fees; how paid.
102.68	Certificate; grade and weight.	102.93	Disposition of samples.
102.69	Copies of certificate to be kept.	102.94	Appeal; not to be refused.
102.70	Inspections.	102.95	Appeal; freedom.
102.71	Reports.		Miscellaneous
102.72	Licenses; suspension or revocation.	102.96	Bonds required; re State warehouses.
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	Grain grading	102.100	One document and one license to cover several products.
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102.81	Complaint.	102.106	Licenses to State and other employees.
102.82	Contents of complaint.	102.107	License to chief sampler or deputy.
102.83	Proof of agent's authority.	102.108	Additional bonding required.
102.84	Certificate of inspection and receipt.	102.109	Examination of warehouses; board of trade interest.
102.85	Filing complaint; extension.	102.110	Registration of public warehouse receipts; protection.
102.86	Determination of appeals; samples.	102.111	Terminal markets.
102.87	Samples required.		
102.88	Representative samples.		
102.89	Appeal; dismissal.		
102.90	Grade certificate; issuance.		
102.91	Fees.		

DEFINITIONS

Section 102.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 102.1 to 102.111, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 102.1 to 102.111, inclusive, (except for the amendments noted in the text,) is Regulations for warehousemen storing grain, Department of Agriculture, Dec. 1937. (SRA, BAE 127, rev.)

102.2 Terms defined. For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(b) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) **Department.** The United States Department of Agriculture.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Designated representative.** The Chief of the Bureau.

(f) Chief of the Bureau. The Chief of the Bureau of Agricultural Economics.

(g) Bureau. The Bureau of Agricultural Economics of the United States Department of Agriculture.

(h) Regulations. Rules and regulations made under the Act by the Secretary.

(i) Dockage. Dockage in grain as defined by the official grain standards of the United States.

(j) Grain. All products commonly classed as grain, such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, grain sorghums, and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the Chief of the Bureau.

(k) Nonstorage grain. Grain received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of grain moving through a warehouse for current merchandising or milling use, against which no receipts are issued and no storage charges assessed, Provided That merchandising or milling stocks held in storage as reserve stocks, or stored for use at an indefinite future date, may not be treated as nonstorage grain.

(l) Warehouse. Unless the context otherwise clearly indicate, any building structure, or other protected inclosure licensed or to be licensed under the Act, in which grain is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which grain is or may be stored.

(m) Bin. A bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.

(n) Warehouseman. Any person lawfully engaged in the business of storing grain, who holds an effective warehouseman's license under the Act, or who has applied for such a license.

(o) License. A license issued under the Act by the Secretary, or his designated representative.

(p) Warehouseman's bond. The bond required by the Act to be given by a warehouseman.

(q) Inspector. A person licensed under the Act by the Secretary, or his designated representative, to inspect and grade and/or certificate the grade of grain stored or to be stored in a warehouse licensed under the Act.

(r) Weigher. A person licensed under the Act by the Secretary, or his designated representative, to weigh and/or certificate the weight of grain stored or to be stored in a warehouse licensed under the Act.

(s) Grain Standards Act. The United States Grain Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C. 71-87).

(t) Official grain standards of the United States. The standards of quality or condition for grain, fixed and established by the Secretary under the Grain Standards Act.

(u) Receipt. A licensed warehouse receipt issued under the Act.*† [Reg. 1, sec. 2]

*†For statutory and source citations, see note to § 102.1.

WAREHOUSE LICENSES

102.3 Application form. Applications for licenses and for amendments of licenses under the Act shall be made to the Secretary upon prescribed forms furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.*† [Reg. 2, sec. 1]

102.4 Scales; bin numbers. (a) Each warehouse must be equipped with suitable scales in good order, and so arranged that all grain, whether for storage or for nonstorage purposes, can be weighed in and out of the warehouse. The scales in any warehouse shall be subject to examination by representatives of the Department and to disapproval by the Chief of the Bureau. If he disapproves any weighing apparatus, it shall not thereafter be used in ascertaining the weight of grain for the purposes of this Act, until such disapproval be withdrawn.

(b) Both bulk grain bins and compartments for sacked grain of all warehouses licensed under the Act shall be identified by means of clearly discernible numbers securely affixed thereto. The series of numbers to be used shall be approved by the Bureau. Bulk grain bins shall be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Compartments shall be numbered in such a manner as to clearly show the space covered by each number.*† [Reg. 2, sec. 2]

102.5 Signs of tenancy; posting. (a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee, (2) the name of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part as may be approved by the Chief of the Bureau.

(d) Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

(e) No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.*† [Reg. 2, sec. 3]

102.6 Net assets. (a) The warehouseman conducting a warehouse for which application for license has been made, shall have and maintain, above all exemptions and liabilities, net assets liable for the

payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 10 cents per bushel of its licensed grain storage capacity, determined in accordance with § 102.14 (a), except that the amount of such assets shall not be less than \$5,000 and need not be more than \$100,000. In case buildings, machinery, or merchandise are included among such assets, the warehouseman shall procure and maintain insurance fully to protect such property against loss of damage by fire. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located.

(b) In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purpose of the assets required under this section, and such warehouseman shall have and maintain above all exemptions and liabilities, net assets adequately protected by insurance against loss or damage by fire, liable for the payment of any indebtedness arising from the conduct of any of such warehouses, to the extent of at least 10 cents per bushel of their aggregate grain storage capacity except that the amount of such assets need not be more than \$100,000.

(c) For the purpose of paragraphs (a) and (b) of this section only, capital stock as such, shall not be considered a liability. A deficiency in assets may be supplied by an increase in the amount of the warehouseman's bond equal to such deficiency.*† [Reg. 2, sec. 4]

102.7 Grounds for not issuing license. A license for the conduct of a warehouse, or any amendment to license, shall not be granted if it is found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of grain, that the warehouseman does not possess a good reputation or is insolvent or incompetent to conduct such warehouse in accordance with the Act and the regulations in this part; that the warehouseman has failed to comply with the regulations in this part, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.*† [Reg. 2, sec. 5]

102.8 Posting of license. Immediately upon receipt of his license or of any modification or extension thereof under the Act, the warehouseman shall post same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 6]

102.9 Warehouse license; suspension; revocation. Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity

*†For statutory and source citations, see note to § 102.1.

for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has for any reason ceased to conduct such licensed warehouse; or (e) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in paragraphs (a) to (e) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 102.99.*† [Reg. 2, sec. 7]

102.10 Return of suspended or revoked license. In case a license issued to a warehouseman terminates or is suspended or revoked by the Secretary or his designated representative, such license shall be immediately returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued and it shall be posted as prescribed in § 102.8: Provided, That in the discretion of the Secretary, or his designated representative, a new license may be issued without reference to the suspension.*† [Reg. 2, sec. 8]

102.11 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof, or a new license may be issued under the same number.*† [Reg. 2, sec. 9]

102.12 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.*† [Reg. 2, sec. 10]

WAREHOUSE BONDS

102.13 Time of filing. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 102.14, he shall file such bond within a time, if any, specified by the Secretary, or his designated representative, said bond to cover all obli-

gations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

102.14 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be fixed at the rate of 5 cents per bushel of the maximum number of bushels that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 102.13–102.17. The amount of said bond shall be fixed at the rate of 5 cents per bushel of the maximum number of bushels that all of said warehouses will accommodate when stored in the manner customary to each of such warehouses for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000.

(b) In case of a deficiency in net assets, there shall be added to the amount fixed in accordance with paragraph (a) of this section an amount equal to such deficiency.

(c) In case the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraph (a) of this section a further amount to meet such conditions.*† [Reg. 3, sec. 2]

102.15 Amendment to license. In case an application is made for an amendment to a license and no bond previously filed by the warehouseman under §§ 102.13–102.17 covers obligations arising during the period covered by such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part, may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

102.16 New bond required each year. A continuous form of license shall not remain in force for more than one year from its effective date, or any subsequent extension thereof, unless each year prior to the date on which the license would expire, the warehouseman files a bond in the required amount with the Secretary and such bond has been approved by him or his designated representative.*† [Reg. 3, sec. 4]

*†For statutory and source citations, see note to § 102.1.

102.17 Approval of bond. No bond, amendment, or continuation thereof shall be accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary, or his designated representative.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

102.18 Form. (a) Every receipt, whether negotiable or non-negotiable, issued for grain stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the warehouseman and the designation, if any, of the warehouse, (2) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (3) in event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (4) a statement conspicuously placed, whether or not the grain is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or otherwise, (5) the net weight, including dockage, if any, of the grain, (6) in the case of grain the identity of which is to be preserved, its identification or location in accordance with § 102.45, (7) the words "Not Negotiable", or "Negotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon, and (8) that the holder of the receipt or the depositor of the grain shall demand the delivery of the grain not later than the expiration of one year from the date of the receipt.

(b) Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a warehouse shall specify a period, not exceeding one year, for which the grain is accepted for storage under the Act and the regulations in this part. Upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of grain in his warehouse, if he then continues to act as a licensed warehouseman, may issue a new receipt for a further specified period, not exceeding one year; provided it is actually determined by a licensed inspector that the grain has not deteriorated and that it is in proper condition for storage for another year.

(c) Every negotiable receipt issued shall, in addition to conforming with the requirements of paragraph (a) of this section, embody within its written or printed terms, a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the grain covered by the receipt.

(d) The grade stated in a receipt shall be stated in accordance with § 102.76 as determined by the inspector who last inspected and graded the grain before the issuance of such receipt, or if an appeal from the determinations of such inspector has been taken either under the Grain Standards Act and regulations thereunder or under § 102.80, the grade shall be stated on such receipt in accordance with the grade as finally determined in such appeal. If the final grade thus de-

terminated be different from that shown by the receipt issued for such grain, the warehouseman shall, upon the return of the old receipt, if the same is not already in his possession, issue a new receipt stating such final grade.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act, such receipt shall have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made purposely by the warehouseman.*† [Reg. 4, sec. 1]

102.19 Grain must be inspected and weighed. (a) Except in case of identity-preserved grain, when the grading is omitted at request of depositor, no receipt shall be issued under the Act or the regulations in this part until the grain covered by such receipt has been inspected and graded by a person duly licensed to inspect and grade such grain and to certificate the grade thereof, and been weighed by a person duly licensed to weigh such grain and to certificate the weight thereof. The receipt issued to cover such grain shall show the grade, including percentage of dockage, if any, condition, and weight, in conformity therewith.

(b) When requested by the depositor of grain the identity of which is to be preserved, a receipt omitting statement of grade but not weight may be issued.

(c) All fungible nonstorage grain received into and delivered out of a warehouse must be correctly inspected, graded, and weighed by a licensed inspector and/or weigher.*† [Reg. 4, sec. 2]

102.20 Copies of receipts. Any copies of receipts, except those issued in lieu of the original in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." If exact copies are not made skeleton copies bearing the same numbers as the corresponding original receipts bear, shall be made, but such skeleton copies need not be marked "Copy—Not Negotiable."*† [Reg. 4, sec. 3]

102.21 Lost or destroyed receipts; bond. (a) In the case of lost or destroyed receipts, if there be no statute of the United States or law of a State applicable thereto a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with him (1) an affidavit showing that the applicant is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the

*†For statutory and source citations, see note to § 102.1.

receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the grain represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 4]

102.22 Printing of receipts. Receipts issued by a warehouseman shall be (a) in form prescribed by the Chief of the Bureau, (b) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (c) on distinctive paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 5]

102.23 Partial delivery of grain. If a warehouseman delivers a part only of a lot of grain for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the grain. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.*† [Reg. 4, sec. 6]

102.24 Return of receipts before delivery of grain. Except as permitted by law or by the regulations in this part a warehouseman shall not deliver grain for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver grain for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of grain covered by a nonnegotiable receipt, the receipt itself shall be surrendered.*† [Reg. 4, sec. 7]

102.25 Nonnegotiable receipts. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of grain covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of grain covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 8]

102.26 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any grain stored or offered for storage in his warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 9]

102.27 Loading out without weighing. When the lawful holder of one or more receipts covering an entire lot of identity preserved grain or a mass of grain stored in a single bin requests the warehouseman to deliver said lot or mass without reweighing said grain, the warehouseman may make such delivery if there is an accurate record of the weight of such grain when received. Such deliveries shall be made only when the lawful holder of the receipts agrees to assume all shortages and other risks incidental thereto, and after the warehouse receipts covering all of the grain in the container have been surrendered to the warehouseman and canceled. After the receipts covering such grain have been surrendered for cancelation no other grain shall be placed in the bin until the entire lot has been delivered.*† [Reg. 4, sec. 10]

102.28 Persons authorized to sign receipts. Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.*† [Reg. 4, sec. 11]

102.29 Receipts; basis for issuance. Before issuing any receipt under the Act each warehouseman shall, unless he personally weighed, inspected, and graded, if graded, a lot of grain, first obtain either a copy of or the original weight certificate, and inspection certificate, if any, covering said lot of grain, and said weight and grade certificates shall be filed as a permanent record in the warehouseman's office when the receipt is issued. The number of the warehouse receipt issued for the grain covered by such certificates shall be written on the certificate before filing.*† [Reg. 4, sec. 12]

102.30 Receipts for stored grain. Receipts must be issued for all grain stored in a warehouse. Receipts need not be issued against nonstorage grain, but each warehouseman shall keep accurate records of the weights, kinds, and grades of all lots of nonstorage grain received into and delivered from his warehouse. Whenever the purpose for which any lot of nonstorage grain was received into a warehouse is changed so that its approximate delivery period from the warehouse becomes indeterminate, receipts shall be issued to cover such grain.*† [Reg. 4, sec. 13]

102.31 No receipts for screenings. No receipt shall be issued for any product or byproduct which would fall under the term "screenings."*† [Reg. 4, sec. 14]

102.32 Canceled receipts; auditing. Each warehouseman, if requested by the Bureau, shall forward his canceled receipts for auditing to such field offices of the Bureau as may be designated from time to time.*† [Reg. 4, sec. 15]

DUTIES OF WAREHOUSEMAN

102.33 Insurance; requirements. (a) Each warehouseman, when so requested in writing as to any grain by the depositor thereof

*†For statutory and source citations, see note to § 102.1.

or lawful holder of the receipt covering such grain, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such grain while in his custody as a warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested, against loss or damage by fire, lightning, and/or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the grain is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all grain stored in his warehouse.

(b) Each warehouseman shall comply fully with the terms of insurance policies or contracts covering his licensed warehouse and all products stored therein, and shall not commit any acts, nor permit his employees to do anything, which might impair or invalidate such insurance.

(c) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 102.8, and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice stating briefly the conditions under which the grain will be insured against loss or damage by fire, lightning, and tornado.

(d) Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

(e) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him.

(f) If at any time a fire shall occur at or within any warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 1]

102.34 Records; safe keeping. Each warehouseman shall provide a fireproof safe, vault, or compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of issued and canceled receipts, except that with the written consent of the Bureau, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books and papers in some other place of safety, approved by the Bureau. All canceled receipts shall be ar-

ranged by the warehouseman in numerical order as soon as possible after their cancelation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 2]

102.35 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the Department a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Department a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 102.8, and at such other place, accessible to the public, as the Bureau may from time to time designate a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 3]

102.36 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving grain for storage and delivering grain out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m. except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his licensed warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, and the telephone number, if any, who shall be authorized to deliver grain stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.*† [Reg. 5, sec. 4]

102.37 System of accounts. Each warehouseman shall have and maintain a system of accounts, approved for the purpose by the Bureau. This shall include a stock record showing for each lot of grain received for storage its net weight including dockage, if any, its grade when its grade is required to be, or is, ascertained, its location, the dates received for and delivered out of storage, the receipts issued and canceled, also a separate record for each depositor of his grain, which shall include a detailed record of all moneys received and disbursed and of all insurance policies taken out and canceled on request of each depositor. The warehouseman shall further keep a general insurance account showing the policy number, issuing company, amount, binding, and expiration date of all fire, tornado, and other insurance policies taken out by him and in each instance show the property covered by such policies. These records shall also show similar information concerning any non-storage grain handled through the warehouse.*† [Reg. 5, sec. 5]

102.38 Reports required. (a) Each warehouseman shall, from time to time, if requested by the Bureau, make such reports, on forms

*†For statutory and source citations, see note to § 102.1.

prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.

(b) Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Bureau, an exact copy of each kind of report submitted.*† [Reg. 5, sec. 6]

102.39 Inspections; examination of warehouse. Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 7]

102.40 Care of grain in licensed warehouses. Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.*† [Reg. 5, sec. 8]

102.41 Care of other grain and other commodities. If, at any time, a warehouseman shall handle or store grain otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise care with respect to it, as not to endanger the grain in his custody as a warehouseman or impair the insurance thereof or his ability to meet his obligations and perform his duties under the Act and the regulations in this part.*† [Reg. 5, sec. 9]

102.42 Excess storage. If at any time a warehouseman shall store grain in his warehouse in excess of the capacity for which it is licensed, such warehouseman shall immediately notify the Bureau of such excess storage, the reason therefor, and the location thereof.*† [Reg. 5, sec. 10]

102.43 Removal of specially stored grain. Except as may be required by law or the regulations in this part, a warehouseman shall not remove any grain for storage from the licensed warehouse or a part thereof in which it may be specially binned or stored for insurance purposes, and transfer the grain to another bin without first obtaining the receipt, canceling the same and issuing a new receipt for said grain following its transfer.*† [Reg. 5, sec. 11]

102.44 Grades and weights; bulk grain. Each warehouseman shall accept all grain for storage and shall deliver out of storage all bulk grain, other than specially binned grain, in accordance with the grades of such grain as determined by a person duly licensed to inspect and grade such grain and to certificate the grade thereof and in accordance with the weights of such grain as determined by a person duly licensed to weigh such grain and to certificate the weight thereof, under the Act, and the regulations in this part; or if an appeal from the determination of an inspector has been taken, either under the Grain Standards Act and regulations thereunder or under

§§ 102.80–102.95, such grain shall be accepted for and delivered out of storage in accordance with the grades as finally determined in such appeal.*† [Reg. 5, sec. 12]

102.45 Storage of identity-preserved grain. Upon the acceptance by a warehouseman for the storage in his warehouse, of any lot of grain the identity of which is to be preserved, he shall store, or cause to be stored, such grain in an individual bin or compartment identified by clearly distinguishable numbers or letters permanently and securely affixed thereto, or shall so mark the lot or the bags of such grain or so place them in the warehouse that the identity of the grain will not be lost during the storage period, and his records shall clearly show the location of such grain in the warehouse.*† [Reg. 5, sec. 13]

102.46 Sacked grain. Each warehouseman shall keep sacked grain stored in an orderly manner so as to permit easy access to all lots and to facilitate inspecting, sampling, counting, and identification of each lot.*† [Reg. 5, sec. 14]

102.47 Warehouses to be kept clean. Each warehouseman shall keep his warehouse reasonably clean at all times and free from straw, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of grain.*† [Reg. 5, sec. 15]

102.48 Delivery of fungible grain. Except as may be provided by law or the regulations in this part, each warehouseman, (a) upon proper presentation of a receipt for any grain other than identity-stored grain, and which grain has not at the request of the depositor or lawful holder of the receipt covering such grain or otherwise as permitted by law or the regulations in this part, been dried or otherwise conditioned by such warehouseman, and upon payment of tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt grain of the grade and quantity named in such receipt; and (b) upon proper presentation of a receipt for any grain the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical grain so stored in his warehouse.*† [Reg. 5, sec. 16]

102.49 Cleaning of grain. Each warehouseman whose warehouse is equipped with machinery suitable for the purpose, shall clean all bulk grain received for storage in such warehouse, on which the inspector at the request of the depositor or lawful holder of the receipt covering such grain has set dockage for cleaning.*† [Reg. 5, sec. 17]

102.50 Grades; separate in storage. A warehouseman may not mix lots of different grades of grain stored or received for storage except when the identity of the grain to be stored is to be preserved or when a depositor surrenders receipts covering two or more lots and requests the warehouseman to deliver the amount of grain represented by the canceled receipts in such a manner that they will become one lot. The balance, if any, of grain resulting from this operation, after weighing and inspecting, is to be stored with grain of like grade or its identity preserved.*† [Reg. 5, sec. 18]

*†For statutory and source citations, see note to § 102.1.

102.51 Stocks to be in balance with grades. Warehouseman must keep stocks of grain in storage by grades in balance with the grades of grain represented by outstanding receipts, except when the grain has unavoidably improved or deteriorated through natural causes. In case the grades of stored grain should get out of balance with grades represented by outstanding receipts, the warehouseman shall effect proper adjustments.*† [Reg. 5, sec. 19]

102.52 Out-of-condition and damaged grain. (a) If the condition of any grain offered for storage is such that it probably will affect the condition of grain in the licensed warehouse, the warehouseman shall not receive such grain for storage or store such grain in his licensed warehouse, but, if the warehouse has separate bins or is equipped with proper conditioning apparatus, he may receive such grain for storage in such separate bins or he may condition it and then store it in such manner as will not lower the grade of other grain.

(b) In case the warehouseman or the Department shall find that storage of grain in direct contact with any part of the structure of the warehouse results, or is likely to result, in damage to the grain, the warehouseman shall not store grain in such part of the warehouse except in such manner and by the use of such material as will keep the grain in the same condition as when stored.*† [Reg. 5, sec. 20]

102.53 Reconditioning grain. In case the warehouseman considers that any portion of the grain in his warehouse is out of condition, or becoming so, he shall direct the inspector to examine the grain in question. If the inspector finds such grain to be out of condition or becoming so and he is of the opinion that by re-elevating, screening, blowing, cooling, or drying the grain can be brought back into condition or that further deterioration can be prevented, such warehouseman shall give immediate notice of the fact to the persons and in the manner specified in § 102.54. If, within 24 hours after the giving of such notice, the owners of such grain have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the inspector, shall, in his warehouse to the extent to which it is equipped with machinery suitable for the purpose, or may in another warehouse or elevator so equipped to the extent to which his warehouse is not equipped with suitable machinery, subject the grain to any or all of the above-mentioned processes.*† [Reg. 5, sec. 21]

102.54 Notice of condition of grain. (a) If the warehouseman with the approval of the inspector, shall determine that the further deterioration of any grain can not be prevented by reconditioning, or after treating it in accordance with § 102.53, it is still out of condition, the warehouseman shall give immediate notice of the fact, in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the grain is stored, (2) the quantity, kind, and grade, if determined, of the grain at the time the notice is given, (3) the actual condition of the grain as nearly as can be ascertained, and the reason, if known, for such condition, (4) the oldest outstanding receipts covering the

amount of grain out of condition, other than sacked or specially binned grain, upon which the grain will be delivered, giving the number and date of each such receipt and the quantity, the kind, and grade of the grain as stated in such receipts, or (5) the outstanding receipts covering the grain out of condition the identity of which was to have been preserved, giving the number and date of each such receipt and the designation of the bin, container or location of such grain as stated in the receipt therefor, and (6) that such grain will be delivered upon the return and cancelation of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the oldest receipts covering the grain in question mentioned in subdivisions (4) and (5) of paragraph (b) of this section if known to the warehouseman, (2) to any other person, including the persons mentioned in paragraph (d) of this section, known by the warehouseman to be interested in the grain, (3) to the grain exchange, board of trade, or chamber of commerce, if any, in the city or town in or nearest to which the warehouse is located, and (4) to the Chief of the Bureau. If the holders of the receipts and the owners of the grain are known to the warehouseman and can not, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested so to do in accordance with paragraph (d) of this section, also immediately notify such persons by telegraph or telephone at their expense. Public notice shall also be given by posting a copy of such notice in a conspicuous place in the main office of the warehouse where receipts are issued.

(d) Any person, interested in any grain or the receipt covering such grain stored in a warehouse, may, in writing, notify the warehouseman conducting such warehouse, of the fact and nature of his interest, and such warehouseman shall keep a record of the fact. If such person requests, in writing, that he be notified regarding the condition of any such grain and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any grain after notification of its condition in accordance with this section.*†. [Reg. 5, sec. 22]

102.55 Sale of grain at public auction. If the grain, advertised in accordance with the requirements of § 102.54 has not been removed from storage by the owner, thereof within 10 days from the date of notice of its being out of condition, the warehouseman in whose warehouse such grain is stored may sell the same at public auction at the expense and for the account of the owner after giving 10 days' notice in the manner specified in § 102.54 (c).*† [Reg. 5, sec. 23]

102.56 Identity-preserved grain. Subject to the provisions of section 13 of the Act (39 Stat. 488; 7 U.S.C. 254), a licensed warehouseman may elect not to receive grain for storage the identity of which is to be preserved while in storage.*† [Reg. 5, sec. 24]

*†For statutory and source citations, see note to § 102.1.

FEES

102.57 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each original or amended warehouseman's license applied for by a warehouseman, and a fee of \$3 for each license, or amendment thereto, issued to an inspector and/or weigher.*† [Reg. 6, sec. 1]

102.58 Warehouse inspection fee. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of \$2 for each 10,000 bushels of the grain storage capacity, or fraction thereof, determined in accordance with § 102.14 (a), but in no case less than \$10 nor more than \$200, and, for each re-examination or re-inspection, applied for by such warehouseman, a fee, based on the extent of the re-examination or reinspection, proportioned to, but not greater than, that prescribed for the original examination or inspection.*† [Reg. 6, sec. 2]

102.59 Advance deposit. Before any warehouseman's license, or amendment thereto, or any inspector's and/or weigher's license, is granted, or original examination or inspection, or re-examination or reinspection applied for by a warehouseman, is made, pursuant to the regulations in this part, the warehouseman and/or inspector or weigher shall deposit with the Bureau the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "Disbursing Clerk, Department of Agriculture."*† [Reg. 6, sec. 3]

102.60 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 102.59 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing same.*† [Reg. 6, sec. 4]

INSPECTORS AND WEAHERS

102.61 Inspectors' and weighers' applications. (a) Application for licenses to inspect and grade or to weigh grain under section 11 of the Act (46 Stat. 1464; 7 U.S.C. 252) shall be made to the Chief of the Bureau on forms furnished for the purpose by him. Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by a statement from the warehouseman for whom the applicant will inspect, grade, or weigh grain under the Act, showing whether the applicant is competent and is acceptable to such warehouseman for the purpose.

(b) Each inspectors' application shall contain (1) evidence that he can correctly grade grain in accordance with the official standards of the United States, or in the absence of such standards in accordance with any standards approved by the Chief of the Bureau, (2) that he has passed his twenty-first birthday, (3) satisfactory evidence that he will be provided with such means or facilities for inspecting and grading grain as may be deemed necessary, for use in the locality in which the applicant expects to perform services as a licensed inspector.

(c) In lieu of compliance with the requirements of paragraph (b) of this section, the license applied for may be granted whenever such applicant furnishes satisfactory evidence that he holds an effective license under the Grain Standards Act and regulations thereunder, to inspect and grade such grain and to certificate the grade thereof.

(d) Applications for licenses to weigh grain shall be on forms furnished for the purpose by the Chief of the Bureau and shall give such information as will show the applicant's experience in weighing grain.

(e) A single application may be made by any person for a license as both inspector and weigher upon complying with the requirements of this section.

(f) An applicant shall at any time furnish such additional information as the Department shall find to be necessary to the consideration of his application.*† [Reg. 7, sec. 1]

102.62 Examination. Each applicant for license as an inspector or weigher and each inspector or weigher shall, whenever requested by an authorized agent of the Department, submit to an examination or test to show his ability properly to inspect and grade or to weigh grain.*† [Reg. 7, sec. 2]

102.63 Posting of license. Each inspector or weigher shall keep his license conspicuously posted in a place designated for the purpose by the Bureau.*† [Reg. 7, sec. 3]

102.64 Duties of inspector and weigher. Each inspector and each weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect and grade or weigh and certificate the grade or weight of grain, stored or to be stored in a warehouse, for which he holds a license, if such grain be offered to him under such conditions as permit proper inspection and weighing and the determination of the grade or weight thereof. No inspector shall issue a certificate of grade for any grain unless the inspection and grading thereof be based upon a correct and representative sample of the grain.*† [Reg. 7, sec. 4]

102.65 Inspection certificate; form. (a) Except as provided in paragraph (b) of this section, each inspection certificate issued under the Act by an inspector shall be in a form approved for the purpose by the Department, and shall embody within its written or printed terms: (1) The caption "United States Warehouse Act, Grain Inspection Certificate", (2) whether it is an original, a duplicate, or

*†For statutory and source citations, see note to § 102.1.

other copy, and that it is not negotiable, (3) the name and location of the warehouse in which the grain is or is to be stored, (4) the date of the certificate, (5) the consecutive number of the certificate, (6) the approximate amount of grain covered by the certificate, (7) the kind of grain covered by the certificate, (8) the grade of the grain, as determined by such licensed inspector, in accordance with § 102.76, and, in the case of grain for which no official grain standards of the United States are in effect, the standard or description in accordance with which such grain is graded, (9) that the certificate is issued by an inspector licensed under the United States Warehouse Act and the regulations thereunder, (10) a statement conspicuously placed to the effect that the certificate is not valid for the purposes of the United States Grain Standards Act, and (11) the signature of the inspector who inspected and graded the grain. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.

(b) In lieu of the inspection certificate provided for in the preceding paragraph, each inspector, who holds an unsuspended and unrevoked license under the Grain Standards Act and regulations thereunder to inspect and grade any grain and to certificate the grade thereof for shipment or delivery for shipment in interstate or foreign commerce, shall, unless otherwise requested as to any such grain by the owner or depositor thereof, issue a certificate of grade covering such grain in accordance with the Grain Standards Act and regulations thereunder. Such grain shall be deemed to be inspected and graded and such certificate of grade shall be deemed to be an inspection certificate for the purposes of the Act and the regulations in this part.*† [Reg. 7, sec. 5]

102.66 Copies of certificate to be accessible. Each inspector shall, as soon as possible after grading any grain and not later than the close of business on the next following business day, make accessible to the parties interested in a transaction in which the grain is involved at the place designated in § 102.63 a true copy of the inspection certificate issued by him for such grain, or a record of each lot or parcel of grain inspected and graded by such licensed inspector showing the information contained on such inspection certificate.*† [Reg. 7, sec. 6]

102.67 Weight certificate. Each weight certificate issued under the Act by a weigher shall be in a form approved for the purpose by the Bureau, shall embody within its written or printed terms: (a) The caption "United States Warehouse Act, Grain Weight Certificate", (b) whether it is an original, a duplicate, or other copy, and that it is not negotiable, (c) the name and location of the warehouse in which the grain is or is to be stored, (d) the date of the certificate, (e) the net weight, including dockage, if any, of the grain, (f) that the certificate is issued by a weigher licensed under the United States Warehouse Act and the regulations thereunder, and (g) the signature of the weigher. In addition, the weight certifi-

cate may include any other matter not inconsistent with the Act or the regulations in this part, subject to the approval of the Bureau.*† [Reg. 7, sec. 7]

102.68 Certificate; grade and weight. The grade and weight of any grain, ascertained by an inspector and a weigher, may be stated on a certificate meeting the combined requirements of §§ 102.65, 102.67, if the form of such certificate shall have been approved for the purpose by the Bureau.*† [Reg. 7, sec. 8]

102.69 Copies of certificate to be kept. Each inspector and each weigher shall keep for a period of one year in a place accessible to interested parties a copy of each certificate issued to him under the regulations in this part, and shall file a copy of each such certificate with the warehouse in which the grain covered by the certificates is stored.*† [Reg. 7, sec. 9]

102.70 Inspections. Each inspector and each weigher shall permit any authorized officer or agent of the Department to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 102.39 as far as any such inspection or examination relates to the performance of the duties of such inspector or weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 10]

102.71 Reports. Each inspector and each weigher shall, from time to time, if requested by the Bureau, make reports, on forms approved for the purpose by the Bureau, bearing upon his activities as such inspector or weigher.*† [Reg. 7, sec. 11]

102.72 Licenses; suspension or revocation. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or weigher temporarily without hearing. Upon a written request or a satisfactory statement of reasons therefor, submitted by the inspector or weigher, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such licensee, (a) has ceased to perform services as such inspector or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such inspector or weigher. As soon as it shall come to the attention of a warehouseman that either of the conditions mentioned under (a) or (b) exists, it shall be the duty of such warehouseman to notify the Bureau in writing. Before the license of any inspector or weigher is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such inspector or weigher shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may

*†For statutory and source citations, see note to § 102.1.

answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 102.99.*† [Reg. 7, sec. 12]

102.73 Suspended or revoked license; termination of license.

(a) In case a license issued to an inspector or a weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the inspector or weigher to whom it was originally issued and it shall be posted as prescribed in § 102.63.

(b) Any license issued, under the Act and the regulations in this part, to an inspector or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked or suspended. Thereupon the license of such inspector or weigher shall be returned to the Department. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to him a new license, omitting the names of the warehouses covering which licenses have been so revoked or suspended. Such new license shall be posted as prescribed in § 102.63.*† [Reg. 7, sec. 13]

102.74 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof may be issued under the same number, in the discretion of the Secretary, or his designated representative.*† [Reg. 7, sec. 14]

102.75 Unlicensed inspectors and weighers. No person shall in any way represent himself to be an inspector or weigher licensed under the Act unless he holds an unsuspended and unrevoked license issued under the Act.*† [Reg. 7, sec. 15]

GRAIN GRADING

102.76 Grade; statement. Whenever the grade of grain is required to be or is stated for the purpose of the Act or the regulations in this part, it shall be stated in accordance with §§ 102.77–102.79.*† [Reg. 8, sec. 1]

102.77 Official grain standards of the United States. The official grain standards of the United States are hereby adopted as the official grain standards for the purposes of the Act and the regulations in this part.*† [Reg. 8, sec. 2]

102.78 Standards of grades for other grain. Until grades for any kind of grain are officially promulgated by the Secretary, the grade of grain, for which no official grain standards of the United States are in effect, shall be stated (a) in accordance with the State standards, if any, established in the State in which the warehouse is located, (b) in the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the grain trade generally in the locality in which

the warehouse is located, subject to the approval of the Bureau, or (c) in the absence of the standards mentioned in (a) and (b) of this section, in accordance with any standards approved for the purpose by the Bureau.*† [Reg. 8, sec. 3]

102.79 Grades based on inspection and sample. Whenever the grade of grain is required to be or is stated for the purposes of the Act or the regulations in this part, it shall be based upon a correct and representative sample of the grain and the inspection and grading thereof shall be made under conditions which permit the determination of its true grade.*† [Reg. 8, sec. 4]

GRAIN APPEALS

102.80 Who may appeal. In case a question arises as to the true grade of grain, stored or to be stored in a warehouse, for which official grain standards of the United States are in effect and for which a grain inspection certificate has been issued in accordance with § 102.64, any interested party may take an appeal for the determination of the true grade of such grain.*† [Reg. 9, sec. 1]

102.81 Complaint. In order to take such an appeal a complaint in writing in accordance with § 102.82 shall be filed, in the Office of Federal Grain Supervision in the district in which the inspection appealed from was made, not later than the close of business on the second business day following the date the grading was performed as shown by the record required by § 102.66.*† [Reg. 9, sec. 2]

102.82 Contents of complaint. Such complaint shall be in English and shall state (a) the name and post-office address of the complainant, (b) the names and post-office addresses of all other parties interested in the grain involved, or if no other parties are named, why not, (c) the name and location of the licensed warehouse in which the grain is or is to be stored, (d) the identification and the location of the grain at the time of taking the appeal, (e) if samples have been agreed upon and are submitted in accordance with § 102.86 (b) a statement thereof, and (f) such other information as may be required by the Office of Federal Grain Supervision in which such complaint is filed or by the Chief of the Bureau. Such complaint shall be signed by the complainant and may be signed by any one or more or all of the parties interested in such appeal. An appeal taken in conformity with the Grain Standards Act and regulations thereunder shall be deemed to be an appeal for the purposes of §§ 102.80–102.95.*† [Reg. 9, sec. 3]

102.83 Proof of agent's authority. In case a complaint is filed under §§ 102.80–102.95 by a person purporting to act in behalf of another person, the grain supervisor in charge of the Office of Federal Grain Supervision in which such complaint is filed, or the Chief of the Bureau, may, if he considers necessary, require proof of the authority of such person to file the complaint.*† [Reg. 9, sec. 4]

102.84 Certificate of inspection and receipt. The complainant shall file or cause to be filed in the Office of Federal Grain Supervision mentioned in § 102.81, with the complaint or before the issuance of

*†For statutory and source citations, see note to § 102.1.

the grade memorandum in the appeal, the inspection certificate for the grain involved issued by the inspector from whose inspection the appeal is taken together with the receipt, if any, covering such grain. If such inspection certificate be in the custody or control of the inspector he shall upon request immediately transmit or deliver it to said Office.*† [Reg. 9, sec. 5]

102.85 Filing complaint; extension. Upon a showing of the discovery of fraud or other good cause for an extension of time the grain supervisor in charge of the Office mentioned in § 102.81 may permit the filing of a complaint or sample after the time prescribed therefor in the regulations in this part, and a statement of such appeal by the official making the same.*† [Reg. 9, sec. 6]

102.86 Determination of appeals; samples. (a) No appeal taken under §§ 102.80–102.95 shall be determined except upon the basis of a representative sample or samples of the grain involved.

(b) The complainant may submit representative samples of the grain involved which have been agreed upon by the warehouseman in whose warehouse the grain is or is to be stored and the interested parties, other than such warehouseman, or have been drawn by a disinterested person selected for the purpose by the warehouseman and such parties.

(c) If samples which have been submitted pursuant to paragraph (b) of this section be deemed unsatisfactory, or if such samples be not submitted, a representative sample or samples of the grain involved shall be drawn by a person authorized for the purpose by the Bureau or the grain supervisor in charge of the Office of Federal Grain Supervision in which the appeal is heard; and the complainant or the warehouseman shall have the grain made accessible and placed under such conditions as to permit the taking of a representative sample.*† [Reg. 9, sec. 7]

102.87 Samples required. Samples of grain involved in an appeal shall be delivered in person or transmitted by express or parcel post to the Office of Federal Grain Supervision in which the appeal is filed.*† [Reg. 9, sec. 8]

102.88 Representative samples. For the purposes of an appeal under §§ 102.80–102.95 no sample shall be deemed to be representative unless it comply with the following requirements:

(a) It shall be at least 2 quarts in size, of which at least $1\frac{1}{8}$ pints shall be inclosed in a clean, airtight container and the remainder, if any, in a clean cloth sack.

(b) Samples shall be taken from as many different portions of the lot or parcel, in accordance with the instructions of the Bureau or the grain supervisor in charge of the Office mentioned in § 102.81 as will show an average of the lot or parcel.

(c) The grain taken from the different portions of a lot or parcel shall be thoroughly mixed, and such mixtures, or a typical portion thereof, otherwise complying with this section, shall constitute a sample of the entire lot or parcel.

(d) In case any portion of a lot or parcel of grain is sour, musty, excessively wet, heating, hot, fire burnt, infested with live weevil

or other insects injurious to stored grain, or otherwise of distinctly low quality, separate samples otherwise complying with this section shall be taken, respectively, from such portion and from the remaining portion. There shall be filed with such samples a statement showing the estimated quantity of each portion of the grain from which each such sample was taken.

(e) In case it shall appear that a lot or parcel of grain has been so loaded or handled as intentionally to conceal evidently inferior grain, a sample of such inferior grain, otherwise complying with this section, shall constitute a sample of the entire lot or parcel.*† [Reg. 9, sec. 9]

102.89 Appeal; dismissal. The grain supervisor in charge of an Office of Federal Grain Supervision in which an appeal is filed may dismiss such appeal without its determination; (a) upon request of the complainant, (b) if it is found that the appeal was not taken in good faith, (c) for noncompliance with the regulations in this part, or (d) because sufficient evidence is not available upon which to determine the true grade of the grain.*† [Reg. 9, sec. 10]

102.90 Grade certificate; issuance. The sample or samples of the grain involved in an appeal complying with §§ 102.80–102.95 shall be examined as soon as possible, such tests shall be applied as are necessary, and except as provided in § 102.89 a grade certificate shall be issued by the grain supervisor hearing the appeal, showing the grade assigned by him to such grain. Such grade certificate shall supersede the inspection certificate for the grain involved. Immediately upon the issuance of a grade certificate under this section the original thereof, together with any receipt covering such grain filed in the appeal, shall be sent to the licensed warehouseman concerned and a copy shall be sent to the licensed inspector and to each other person shown by the record of the appeal to be interested therein.*† [Reg. 9, sec. 11]

102.91 Fees. (a) The minimum fee in an appeal shall be \$1 if it involve the grade of grain in a wagon or in a lot of 25 sacks or less. In any other appeal the minimum fee shall be \$1.50.

When the total fee in any appeal at the rates specified below in this paragraph would amount to more than the minimum, the fee in the appeal shall be fixed as follows:

For bulk or sacked grain in carload lots, \$1.50 per car;

For bulk or sacked grain in wagon lots, \$1 per wagon;

For bulk or sacked grain in other than in carload or wagon lots, 50 cents per 1,000 bushels or fraction thereof, except as provided in the first sentence of this section.

(b) Such further charges may be made for telegraph and telephone toll charges, express, parcel post, registry fees, and for other items paid or incurred by the Department on account of a dispute or an appeal, and for drawing and submitting samples required by §§ 102.80–102.95, including such traveling expenses, if any, incurred in accordance with the fiscal regulations of the Department as the Chief of the Bureau may deem proper.

*†For statutory and source citations, see note to § 102.1.

(c) The fees and expenses fixed in accordance with this section shall be assessed against the complainant.*† [Reg. 9, sec. 12]

102.92 Advance deposit; fees; how paid. (a) If required by the grain supervisor in charge of the Office of Federal Grain Supervision in which the complaint is filed or by the Chief of the Bureau, the complainant shall make an advance deposit to cover the expenses payable by him under § 102.91. Such deposit shall be in an amount fixed by such grain supervisor or the Chief of the Bureau and shall be in the form of a check, certified if required by the Chief of the Bureau, or a post-office or express money order payable to the order of "Disbursing Clerk, Department of Agriculture." Additional sums may be required by the official hearing the appeal when deemed necessary by him as advance deposits. In case an appeal be sustained, the amount of the fee assessed shall be refunded. As soon as possible after the determination of an appeal in connection with which any such advance deposit shall have been made the Chief of the Bureau shall furnish the disbursing clerk of the Department with a statement of all fees and expenses chargeable against such advance deposits. Thereupon the disbursing clerk shall return to the person making the advance deposit as much thereof as shall not be required for the payment of such expenses.

(b) All fees not covered by advance deposits shall be payable immediately upon service of the original or a copy of the grade certificate of the grain supervisor and shall be paid by check, certified if required by the Chief of the Bureau, or post-office or express money order, drawn to the order of "Disbursing Clerk, Department of Agriculture", or in cash to the disbursing clerk.

(c) In case an appeal is not sustained, all sums assessed as fees and expenses against such advance deposits and all sums collected and received by the disbursing clerk in payment of such fees and expenses shall be deposited and covered into the Treasury of the United States as miscellaneous receipts.*† [Reg. 9, sec. 13]

102.93 Disposition of samples. Samples of grain submitted in appeals under §§ 102.80–102.95, or such portions thereof as have not been used in determining the grade and the containers of such samples may, after the expiration of one month be used for the purposes of the Department or disposed of in accordance with the property regulations of the Department and the proceeds, if any, covered into the Treasury of the United States as miscellaneous receipts, or may, at any time in the discretion of the Chief of the Bureau be returned to the party by whom they were filed or his agent at his expense.*† [Reg. 9, sec. 14]

102.94 Appeal; not to be refused. No rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department or similar organization, nor any contract, agreement, or understanding, shall be ground for refusing to hear and determine any appeal taken under §§ 102.80–102.95.*† [Reg. 9, sec. 15]

102.95 Appeal; freedom. No person, licensed under the Act, shall, directly or indirectly by any means whatsoever, deter or prevent or attempt to deter or prevent any party from taking an appeal under §§ 102.80–102.95.*† [Reg. 9, sec. 16]

MISCELLANEOUS

102.96 Bonds required; re State warehouses. Every person applying for a license, or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part, except § 102.6, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of grain to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 102.13, 102.14, file with the Secretary, or his designated representative, a single bond meeting the requirements of the Act and this part, in such form, and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of grain and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

102.97 Publications. Publications under the Act and the regulations in this part shall be made in such media as may be deemed proper by the Chief of the Bureau.*† [Reg. 10, sec. 2]

102.98 Information of violations. Every person licensed under the Act shall immediately furnish the Department any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

102.99 Procedure in hearings. For the purpose of a hearing under the Act or the regulations in this part, except §§ 102.80–102.95, the licensee involved shall be allowed a reasonable time, fixed by the Secretary, or his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary, or his designated representative. The testimony of the

*†For statutory and source citations, see note to § 102.1.

witnesses at such oral hearings shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary, or his designated representative. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. The records, and when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

102.100 One document and one license to cover several products. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.*† [Reg. 10, sec. 5]

102.101 Assets and bond; combination warehouses. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.*† [Reg. 10, sec. 6]

102.102 Amendments. Any amendment to the regulations in this part, unless otherwise stated herein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 7]

TERMINAL AND FUTURES CONTRACT MARKETS

102.103 Futures contract markets defined. For the purpose of §§ 102.103–102.111 a futures contract market is any grain market designated as a futures contract market under authority of the Commodity Exchange Act (49 Stat. 1491; 7 U.S.C., Sup., Chapter 1).* [Reg. 11, sec. 1, SRA, BAE 127, as added Dec. 17, 1936]

102.104 Licenses to weigh grain; futures contracts. Licenses to weigh grain into, out of, and within licensed warehouses, receipts of which are deliverable in satisfaction of futures contracts may be issued to the weighmaster and his deputies of such contract market.* [Reg. 11, sec. 2, SRA, BAE 127, as added Dec. 17, 1936]

102.105 Registrar of warehouse receipts; futures contract market. The Chief of the Bureau may approve as registrar of ware-

house receipts issued for grain in licensed elevators operating in a futures contract market the official designated by the State in which such contract market is located, if such an official position has been created by law, or any other individual provided such individual is not an employee of or the owner of any such licensed elevator.* [Reg. 11, sec. 3, SRA, BAE 127, as added Dec. 17, 1936]

102.106 Licenses to State and other employees. Licenses may be issued to employees of the grain inspection department of any State or any other agency to inspect and to certificate the grade of grain moving into, out of, or within the licensed elevators.* [Reg. 11, sec. 4, SRA, BAE 127, as added Dec. 17, 1936]

102.107 License to chief sampler or deputy. Licenses may be issued to a chief sampler or his deputies in any market to sample and to inspect grain stored or to be stored in any licensed warehouse in a specified market for the purpose of determining the storability of the grain, subject to the Act and the regulations thereunder. Should a difference of opinion exist between any licensed warehouseman, the licensed sampler or any party having an interest in the grain, an appeal may be filed within 24 hours with the Chief of the Bureau who shall appoint three disinterested persons to serve as an appeals committee and the findings of this committee shall be final and binding on all parties.* [Reg. 11, sec. 5, SRA, BAE 127, as added Dec. 17, 1936]

102.108 Additional bonding required. In addition to the financial responsibility and the bonding requirements of §§ 102.6, 102.13–102.17, such additional bond shall be required for the protection of the public as will make the bonded responsibility of each licensed warehouseman equal to the maximum amount of bond required of nonlicensed warehousemen by the exchange, board of trade, or other agency within said market in which the licensed warehouseman is operating.* [Reg. 11, sec. 6, SRA, BAE 127, as added Dec. 17, 1936]

102.109 Examination of warehouses; board of trade interest. Annually or more frequently if desired, a duly authorized committee of any exchange or board of trade that has been designated as a contract market may enter any warehouse operating under the regulations in this part, when accompanied by U. S. warehouse examiners, to observe the official examination of the warehouse; or such committee may participate in the making of such examination, under the supervision and direction of the U. S. warehouse examiner in charge. The committee shall be afforded full knowledge of the quantities, kinds, grades, and condition of all grain in the warehouse. The committee may also with the warehouse examiners have access to the warehouseman's records of receipts, fire insurance, weights and grades. In lieu of an examination by any committee of the exchange or board of trade the Department will furnish, if desired, to the secretary of the exchange or board of trade a summarized statement of its findings of conditions at each licensed warehouse operating within the market.* [Reg. 11, sec. 7, SRA, BAE 127, as added Dec. 17, 1936]

102.110 Registration of public warehouse receipts; protection. When a contract market designates any agency for the registra-

*For statutory citation, see note to § 102.1.

tion of public warehouse receipts and such agency is approved as provided for in § 102.105, all warehouse receipts shall be registered with the registrar and any change in ownership of a warehouse receipt shall be reported to the registrar by the owner thereof, giving his name and address to the registrar. All registered receipts shall be entitled to the following protection:

(a) Whenever any licensed warehouseman considers that any grain stored in his warehouse is out of condition, or becoming so, and should be loaded out in order to protect the interests of the parties concerned, such warehouseman shall notify the registrar and the Chief of Bureau, giving the location, approximate quantity, grades, and condition of such grain, and the specific reason which makes loading out necessary. The registrar shall immediately notify the chief sampler, if there be one, otherwise the chief inspector, of the contract market who shall at once proceed to the warehouse in which the grain is stored and examine it, in conjunction with the licensed warehouseman. If the chief sampler, or chief inspector, agrees with the warehouseman that the grain should be loaded out, he shall so notify the registrar and the Chief of the Bureau. If the chief sampler does not agree with the warehouseman, the latter shall have the right to appeal to the Chief of Bureau who shall appoint an appeals committee as provided in § 102.107. If, on such appeal, the warehouseman is sustained, the registrar shall be notified and such warehouse receipts as are selected as herein provided shall no longer be regular for delivery in satisfaction of futures contracts made under the rules and regulations of such contract market.

The registrar shall thereupon select the oldest registered warehouse receipt for grain of the grade involved and such additional next oldest registered warehouse receipts in the order of their issuance as may be necessary to equal the total quantity of the grain involved, unless such grain has been stored identity preserved, and shall notify such holder or holders or their agents and the president of the contract market of the condition of the grain and the necessity for its being loaded out. When this information reaches the president of the contract market he shall appoint a committee consisting of five disinterested handlers of cash grain, and notify the Chief of Bureau of the appointment of said committee giving the name, address, and business of each member. Each member of said committee shall be subject to disapproval by the Chief of Bureau. If no exception is taken to the committee membership during the same business day by the Chief of Bureau, the committee shall meet at once, and after taking into consideration various factors that establish the value of the grade of grain called for by the receipts held by such owner or owners, shall determine the fair value of the grain on the basis of the market quotations for grain of the grade called for by the receipts on the day of the finding of the appeals committee that the grain should be loaded out, which price shall be paid to the owner or holder of each such receipt by the licensed warehouseman. If the price offered is not satisfactory to any such owner or holder, a committee appointed by the president of such contract market at the request of such owner or holder shall procure other offers for

such grain and such offers shall be immediately reported to such owner or holder or to his agent. If the owner refuses to accept any such offers he shall have the 2 following business days to order and furnish facilities for loading such grain out of store and during this period the warehouseman shall be obliged to deliver the grain covered by the warehouse receipts, but not more than 3 days shall elapse after notification by the registrar to the holder of the receipts before satisfactory disposition shall have been made of the grain either by sale or by ordering out and furnishing facilities to load same, provided the amount of such grain does not exceed 100,000 bushels in any one elevator. If the amount of grain in question exceeds 100,000 bushels, the owner or owners of the warehouse receipts shall be allowed 48 hours of grace over and above the aforementioned 3 days for each 100,000 bushels or fraction thereof in excess of the first 100,000 bushels.

(b) In the event that the holder of the warehouse receipt or his agent fails to remove the grain or make other satisfactory disposition of same within the prescribed time it shall be held for his account and any loss in grade sustained shall likewise be for his account.

(c) Nothing in the foregoing provisions shall be construed as prohibiting the warehouseman from fulfilling contracts from other stocks under his control, subject to the U. S. Warehouse Act and regulations thereunder.* [Reg. 11, sec. 8, SRA, BAE 127, as added Dec. 17, 1936]

102.111 Terminal markets. Sections 102.103–102.111 apply only to warehousemen operating in such markets as the Department may view as terminal markets or in such markets as may be designated as futures contract markets. All other regulations issued under the Act and applicable to grain warehousemen shall apply to warehousemen operating in such terminal or futures contract markets except as such regulations may conflict with §§ 102.103–102.111.* [Reg. 11, sec. 9, SRA, BAE 127, as added Dec. 17, 1936]

PART 103—TOBACCO WAREHOUSES

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103.52 Applications; samplers', inspectors', graders', and weighers'.	
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CROSS REFERENCE

Regulations under the Tobacco Inspection Act: See Part 29.

Warehouseman to provide mandatory inspection tickets: See §§ 29.18–29.27.

DEFINITIONS

Section 103.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 103.1 to 103.81, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 103.1 to 103.81, inclusive, (except for the amendments noted in the text,) is Regulations for warehousemen storing tobacco, Department of Agriculture, Mar. 26, 1936. (SRA, BAE 129, rev.)

103.2 Terms defined. For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(b) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) **Secretary.** The Secretary of Agriculture of the United States.

(d) **Designated representative.** The Chief of the Bureau of Agricultural Economics.

(e) **Department.** United States Department of Agriculture.

(f) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(g) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(h) **Regulations.** Rules and regulations made under the Act by the Secretary.

(i) **Warehouse.** Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which tobacco is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which tobacco is or may be stored and for which a license has been issued under the Act.

(j) **Warehouseman.** Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing tobacco and holding a warehouse license.

(k) **License.** A license issued under the Act by the Secretary.

(l) **Type.** Any one of the main classes of tobacco having certain peculiar characteristics which will permit of its being divided into a single system of grades.

(m) **Grade.** Any one of the divisions of a type, which may be a combination of any or all of the four factors, group, quality, color, and length.

(n) **Form.** The designation of the stage of preparation of tobacco, such as unstemmed, stemmed, stems, etc.

(o) **Condition.** Any state of tobacco which is not covered by form or grade and which has a material bearing on its value, including its keeping quality.

(p) **Sampler.** A person licensed under the Act by the Secretary to sample and to certificate or tag and seal samples of tobacco drawn by him under the Act.

(q) **Inspector.** A person licensed under the Act by the Secretary to inspect and to certificate the keeping quality of the tobacco in addition to the performance of the duties of a sampler.

(r) **Grader.** A person licensed under the Act by the Secretary to grade and to certificate the type, grade, form, and condition of tobacco.

(s) **Weigher.** A person licensed under the Act by the Secretary to weigh and certificate the weight of tobacco.

(t) **Package.** A hogshead, tierce, case, or other unit.

(u) **Official sample.** A sample of a package of tobacco drawn, tagged, and prepared by a sampler in accordance with §§ 103.55, 103.56.

(v) **Receipt.** A warehouse receipt.

(w) **State.** A State, Territory, or District of the United States.* [Reg. 1, sec. 2, SRA, BAE 129, Aug. 3, 1935, as amended Mar. 26, 1936]

WAREHOUSE LICENSES

103.3 Application form. Applications for licenses and for amendments to licenses under the Act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Department may find necessary to a proper consideration of his application.*† [Reg. 2, sec. 1]

103.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative that the warehouse is not suitable for the proper storage of tobacco, that the warehouseman is insolvent or is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.*† [Reg. 2, sec. 2]

103.5 Net assets. Each warehouseman conducting a warehouse licensed, or for which application for license has been made, shall have and maintain, above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$5 per 1,000 pounds of the maximum number of pounds of tobacco that the warehouse will accommodate when stored in the manner customary to the warehouse, as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000 and need not be more than \$100,000. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. A deficiency in such assets may be supplied by an increase in the amount of the licensed warehouseman's bond in accordance with § 103.12 (b).*† [Reg. 2, sec. 3]

103.6 Posting license. Immediately upon receipt of his license or of any amendment thereto under the Act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

103.7 Suspension or revocation of license. Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily

without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent, (b) has parted, in whole or in part, with his control over the licensed warehouse, (c) is in process of dissolution or has been dissolved, (d) has ceased to conduct such licensed warehouse, or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked for any violation of or failure to comply with any provision of the Act or of the regulations in this part or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 103.78.*† [Reg. 2, sec. 5]

103.8 Return of suspended or revoked license. If a license issued to a warehouseman terminates or is suspended or revoked by the Secretary or by his designated representative it shall be returned to the Secretary when requested. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 103.6.*† [Reg. 2, sec. 6]

103.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same or a new number.*† [Reg. 2, sec. 7]

103.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

103.11 Time of filing. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 103.12, he shall file such bond within a time, if any specified by the Secretary,

*†For statutory and source citations, see note to § 103.1.

or his designated representative, said bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

103.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of \$5 per 1,000 pounds of the maximum number of pounds of tobacco that the warehouse will accommodate when stored in the manner customary to the warehouse, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for the said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 103.11–103.15.

(b) In case of a deficiency in net assets under § 103.5 there shall be added to the amount ascertained in accordance with paragraph (a) of this section an amount equal to such deficiency.

(c) If the Secretary, or his designated representative finds the existence of conditions warranting such action, there shall be added to the amount ascertained in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him to meet such conditions.*† [Reg. 3, sec. 2]

103.13 Amendment to license. If an application is made under § 103.3 for an amendment to a license and no bond previously filed by the warehouseman under §§ 103.11–103.15 covers obligations arising during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative that his application for such modification or extension will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part, may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

103.14 New bond required each year. Whenever a license has been issued for a longer period than 1 year, such license shall not be effective beyond 1 year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by the Secretary or his designated representative prior to the date on which that license would have expired had it been issued for but 1 year, subject to the provisions of § 103.13.*† [Reg. 3, sec. 4]

103.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary or his designated representative.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

103.16 Form. (a) Every receipt, whether negotiable or non-negotiable, issued for tobacco stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the warehouseman and the designation, if any, of the warehouse, (2) the license number of the warehouseman, (3) the number of the bonded compartment, if any, in which the tobacco is stored, (4) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (5) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (6) the identification number given to each package in accordance with § 103.33, (7) a statement, conspicuously placed, indicating whether the tobacco is insured by the warehouseman, and, if insured, to what extent against loss or damage by fire, lightning, or tornado, and (8) the words "Negotiable" or "Not negotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for tobacco stored in a warehouse shall specify a period, not exceeding 3 years, for which the tobacco is accepted for storage under the Act and the regulations in this part, but upon demand and the surrender of the receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, so far as the available capacity of his warehouse then permits and upon such lawful terms and conditions as may be granted by him at such time to other depositors of tobacco in the warehouse, if he then continue to act as a licensed warehouseman, may either extend the original receipt by making an appropriate notation thereon or issue a new receipt for a further specified period not exceeding 3 years, provided it is actually determined by a licensed inspector that the tobacco has not deteriorated and that it is in proper condition for further storage.

(c) Every negotiable receipt issued for tobacco stored in a licensed warehouse shall, in addition to complying with the requirements of paragraphs (a) and (b) of this section, embody within its written or printed terms a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the tobacco covered by the receipt.

(d) Whenever the type, grade, form, or condition is required to be or is stated in a receipt for tobacco stored in a licensed warehouse,

*†For statutory and source citations, see note to § 103.1.

it shall be stated in accordance with § 103.69. Whenever the grade is stated in such receipt, the type, form, and condition also must be stated.

(e) If a warehouseman issues a receipt under the Act omitting any information, not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made.*† [Reg. 4, sec. 1]

103.17 Copies of receipts. Carbon copies of all receipts shall be made. All such copies, except those issued in lieu of the original, in case of lost or destroyed receipts, shall, if there be no statute of the United States or law of a State providing otherwise, have clearly and conspicuously printed or stamped thereon the words "First Copy Not Negotiable" or "Second Copy Not Negotiable", as the case may be.*† [Reg. 4, sec. 2]

103.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the tobacco represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business and is subject to service of process in a suit on the bond in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 3]

103.19 Printing of receipts. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Chief of the Bureau; (b) upon distinctive paper specified by him; (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing; and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

103.20 Partial delivery of tobacco. If a warehouseman delivers a part only of a lot of tobacco for which he has issued a negotiable

receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the tobacco. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.*† [Reg. 4, sec. 5]

103.21 Return of receipts before delivery of tobacco. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver tobacco for which he has issued a negotiable receipt until the receipt has been returned to him and canceled; and shall not deliver tobacco for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written acknowledgment thereof. Before delivery is made of the last portion of a lot of tobacco covered by a nonnegotiable receipt, the receipt itself shall be surrendered.*† [Reg. 4, sec. 6]

103.22 Nonnegotiable receipts. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of tobacco covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of tobacco covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 7]

103.23 Person authorized to sign receipts. Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.*† [Reg. 4, sec. 8]

103.24 Receipts; basis for issuance. Before issuing any receipt under the Act each warehouseman shall, unless he has personally weighed, inspected and graded, if graded, a lot of tobacco, first obtain either a copy of or the original weight certificate, and inspection and/or grade certificate, if any, covering said lot of tobacco and said weight, inspection and grade certificate shall be filed as a permanent record in the warehouseman's office when the receipt is issued. The number of the warehouse receipt issued for the tobacco covered by such certificate or certificates shall be written on the certificate or certificates before filing.*† [Reg. 4, sec. 9]

103.25 Omission of grade; no compulsion by warehouseman. No licensed warehouseman shall, directly or indirectly, by any means whatsoever compel or attempt to compel the depositor of any tobacco stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 10]

DUTIES OF LICENSED WAREHOUSEMAN

103.26 Insurance; requirements. Each warehouseman, when so requested in writing by the depositor or the lawful holder of the

*†For statutory and source citations, see note to § 103.1.

receipt for any tobacco, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such tobacco while in his custody insured in his own name, or arrange for its insurance otherwise, to the extent so requested against loss or damage by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the tobacco is not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all tobacco.

Each warehouseman shall keep exposed conspicuously in the place prescribed by § 103.6 and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice stating briefly the conditions under which tobacco will be insured against loss or damage by fire, lightning, or tornado.

Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him upon tobacco stored in his warehouse, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 1]

103.27 Duties re insurance and bonding companies. Each warehouseman, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, shall pay premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 2]

103.28 Records; safe keeping. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, unissued receipt blanks, copies of receipts issued, and canceled receipts, except that with the written approval of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety. Copies of all receipts, and all canceled receipts as soon as possible after the cancelation, shall be arranged by the warehouseman in numerical order and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 3]

103.29 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted the warehouseman shall file with the Bureau a copy of his rules and a schedule of charges

to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 103.6, and at such other place, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 4]

103.30 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving tobacco for storage and delivering tobacco out of storage every business day for a period of not less than 6 hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he may be found, who shall be authorized to deliver tobacco stored in such warehouse, upon lawful demand and proper compliance with the regulations in this part.*† [Reg. 5, sec. 5]

103.31 Packaging tobacco. A warehouseman shall not receive for storage in his warehouse any tobacco that is not properly packaged.

A warehouseman shall return to the package from which it is taken all the tobacco drawn for the selection of a sample, except the portion used for such sample.*† [Reg. 5, sec. 6]

103.32 Clean warehouse. Each warehouseman shall keep his warehouse clean and free from trash, rubbish, and scattered tobacco. He shall also exercise every precaution to keep his warehouse free of rats or other pests.

When in the opinion of the Chief of the Bureau or his representatives it may appear necessary, it shall be the duty of each licensed warehouseman to fumigate thoroughly his licensed warehouse with such chemicals as may be approved by the Chief of the Bureau for that purpose.*† [Reg. 5, sec. 7]

103.33 Package identification. A warehouseman shall mark, stencil, or tag each package of tobacco received for storage in his warehouse with a number by which the identity of such package will be preserved. Such numbers shall be in numerical sequence or any series of numerical sequences approved by the Chief of the Bureau or his representative, shall be made with some durable substance, and shall be clear and legible. If tags are used they shall be made of substantial material and securely attached to the packages.*† [Reg. 5, sec. 8]

103.34 Package arrangement. (a) A warehouseman shall arrange the tobacco stored in his warehouse so that each package of each

*†For statutory and source citations, see note to § 103.1

depositor can be readily removed for inspecting, weighing, or delivering, and he shall arrange each package of tobacco in his warehouse so that the identification number thereon required by § 103.33 is visible and readily accessible, but when the Chief of the Bureau shall find that it is not practicable to arrange each package so that the identification numbers are visible and accessible, he may authorize the warehouseman to arrange the packages of tobacco in rows and keep in the warehouse a card or chart upon which shall be clearly shown the identification number of each package stored in each row. Such authorization may be withdrawn at any time that the warehouseman fails to observe this requirement or to keep his record current.

(b) If, at any time, a warehouseman shall be offered tobacco in such quantity for storage so as to exceed the capacity of his warehouse, as shown in his license, he shall not accept such tobacco until he has first secured authority through an amended license, and after such authority has been granted the warehouseman shall continue to arrange the tobacco in accordance with paragraph (a) of this section, and so as not to obstruct free access to the tobacco and the proper use of sprinkler or other fire protection equipment provided for the warehouse.*† [Reg. 5, sec. 9]

103.35 Care of stock and equipment. Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to tobacco in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. He shall see that the sprinkler or other fire protection equipment, if any, provided for his warehouse is maintained in proper working order.*† [Reg. 5, sec. 10]

103.36 Care of other commodities. If, at any time, a warehouseman shall handle tobacco other than for storage, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the tobacco in his custody as a warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision that such commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of, or impair the insurance on, tobacco covered by licensed receipts.*† [Reg. 5, sec. 11]

103.37 Removal of tobacco in storage. Except as permitted by law or the regulations in this part, a warehouseman shall not remove any tobacco in storage from the part of the warehouse shown in the receipt to another part covered by the license, or to any other licensed warehouse, without first securing the receipt and indorsing on it the fact and date of such removal and making an identical indorsement on the copy of the original receipt. If the insurance on any tobacco

would be affected by such removal, prior to removal the warehouseman shall obtain the consent in writing of the holder of the receipt. In the event it should be necessary for purposes of proper sampling and inspecting to move temporarily tobacco from the licensed warehouse, or licensed compartment shown on the outstanding receipt to another licensed warehouse or licensed compartment, removal for such purpose may be made without recalling the outstanding receipt upon compliance with the following conditions:

(a) That such tobacco will be moved only upon specific instructions of the depositor of the tobacco when title to the tobacco remains in him, or of the holder of the receipt, such instructions to be reduced to writing and filed by the warehouseman with his other warehouse records. Said instructions shall show by marks or numbers the specific tobacco to be moved, the warehouse or compartment from and to which the tobacco is to be moved, the date of removal and upon return to the warehouse or compartment from which removed the warehouseman shall indicate the date of return.

(b) That said tobacco so removed shall be fully covered by insurance against loss by fire, lightning, tornado, or theft both while in transit to and from the licensed warehouse or licensed compartment shown in the outstanding receipt and while in the warehouse in which it is being sampled and inspected.

(c) That no such removal from one licensed warehouse or licensed compartment to another licensed warehouse or licensed compartment shall take place while Department examiners are engaged in making inspections except as the chief of the inspection party may approve.

Under no other circumstances, unless it becomes absolutely necessary to protect the tobacco, shall tobacco covered by receipts issued under the Act be removed from a warehouse, except as provided in § 103.21. In case it becomes necessary to remove tobacco from a warehouse prior to the surrender of the receipts, the warehouseman immediately upon such removal, shall notify the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 12]

103.38 Handling and storing; care. A warehouseman shall not handle or store tobacco in such a manner as will injure or damage the tobacco or the packages containing the tobacco.*† [Reg. 5, sec. 13]

103.39 Tobacco out of condition. (a) If the warehouseman, with the approval of a licensed inspector or grader shall determine that any tobacco is deteriorating and that such deterioration can not be stopped, the warehouseman shall give immediate notice of the fact in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the tobacco is stored; (2) the actual condition of the tobacco as nearly as can be ascertained, and the reason, if known, for such condition; (3) the outstanding receipts covering the tobacco out of condition, giving the number and date of each such receipt and the type, grade, form, condition, and weight of the tobacco as stated in each such receipt; and (4) that such tobacco will be delivered upon the return and surrender of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts, if known to

*†For statutory and source citations, see note to § 103.1.

the warehouseman; (2) to the person who originally deposited the tobacco; (3) to any other persons known by the warehouseman to be interested in the tobacco; and (4) to the Chief of the Bureau. Public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. If the holders of the receipts and the owners of the tobacco are known to the warehouseman and cannot, in the regular course of the mails, be reached within 36 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person financially interested in any tobacco or the receipt covering such tobacco stored in a licensed warehouse may, in writing, notify the warehouseman of the fact of his interest, and such warehouseman shall keep a record of that fact. If such person request in writing that he be notified regarding the condition of any such tobacco and agree to pay the cost of any telegraph or telephone toll charge the warehouseman shall notify such person in accordance with his request.

(e) If the tobacco advertised in accordance with the requirements of this section has not been removed from storage by the owner thereof within seven days from the date of notice of its being out of condition, the warehouseman in whose warehouse such tobacco is stored may sell the same at public auction at the expense and for the account of the owner, after giving seven days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any tobacco after notification of its condition has been given in accordance with this section.*† [Reg. 5, sec. 14]

103.40 System of accounts. A warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Chief of the Bureau or his representative, which shall show for each package of tobacco the name of the depositor, the identification number mentioned in § 103.33, its weight, type, grade, form, and condition when same is required to be or is ascertained, its location, the dates received and delivered out of storage, the receipts issued and canceled, and a separate record for each depositor of his tobacco, and such accounts shall include a detailed record of all moneys received and disbursed and of all insurance policies taken out and canceled.*† [Reg. 5, sec. 15]

103.41 Reports; copies. Each warehouseman shall, from time to time, when requested by the Chief of the Bureau or his representative, make reports, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Chief of the Bureau or his representative, for each kind of report, a true copy of each such report submitted by such warehouseman under this section and § 103.46.*† [Reg. 5, sec. 16]

103.42 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to Washington or to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion of each canceled receipt as the Bureau may designate, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 17]

103.43 Examination of warehouses. Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine, at any time, any warehouse for the conduct of which such warehouseman has been licensed, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 18]

103.44 Weighing apparatus. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for tobacco stored in a licensed warehouse, shall be subject to examination by any officer or agent of the Department employed for the purpose. If the Bureau shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval is withdrawn, be used in ascertaining the weight of tobacco for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 19]

103.45 Licensee preferred for service. Except as authorized by the Chief of the Bureau, a warehouseman shall not have any tobacco stored or to be stored in his warehouse, sampled, inspected, graded, or weighed for the purpose of his record or receipts by any person not licensed under the Act to perform such services, if there be a person so licensed for such warehouse.

When a grade or weight certificate has been issued by a grader or weigher and delivered to the warehouseman with the first copy of such certificate, the warehouseman shall fill in the identification numbers required in § 103.33, on each certificate, and shall mail or deliver the original certificate to the depositor and file the copy of such certificate as a part of the records of the warehouse.*† [Reg. 5, sec. 20]

103.46 Reporting fire loss. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegraph to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 21]

103.47 Signs of tenancy; posting. Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

*†For statutory and source citations, see note to § 103.1.

Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (a) The name and license number of the licensee, (b) the name of the warehouse, (c) whether the warehouseman is owner or lessee, and (d) the words "public warehouse."

Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part as may be approved by the Chief of the Bureau.

Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.*† [Reg. 5, sec. 22]

FEES

103.48 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each original or amended warehouseman's license, and a fee of \$3 for each license, or amendment thereto, issued to a sampler, weigher, grader and/or an inspector.*† [Reg. 6, sec. 1]

103.49 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination, and for each re-examination of a warehouse when made upon application of a warehouseman, a fee at the rate of \$3 for each 100,000 pounds of storage capacity or fraction thereof, as determined in accordance with § 103.12, but in no case less than \$10 nor more than \$200.*† [Reg. 6, sec. 2]

103.50 Advance deposit. Before any warehouseman's license or amendment thereto, or any sampler's, weigher's, grader's or inspector's license, is granted, or any examination applied for by a warehouseman is made, pursuant to the regulations in this part, the warehouseman shall deposit with the Chief of the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "Disbursing Clerk, United States Department of Agriculture."*† [Reg. 6, sec. 3]

103.51 Return of excess deposit. The disbursing clerk of the Department shall hold in his custody each advance deposit made under § 103.50 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED SAMPLERS, INSPECTORS, GRADERS, AND WEIGHERS

103.52 Applications; samplers', inspectors', graders', and weighers'. Applications for licenses to sample, to inspect, and to

grade or to weigh tobacco under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (a) satisfactory evidence that he has passed his twenty-first birthday, (b) the name and location of a warehouse or warehouses licensed, or for which application for license has been made under the Act in which tobacco sought to be sampled, inspected, graded, or weighed under such license is or may be stored, (c) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (d) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient, (e) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him, and (f) such other information as the Bureau may deem necessary, Provided, That when an application for a license to sample, to inspect, to grade, or to weigh tobacco is filed by a person who does not intend to sample, to inspect, to grade, or to weigh for any particular licensed warehouseman but who does intend to sample, to inspect, to grade, or to weigh tobacco stored or to be stored in a licensed warehouse and to issue certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such tobacco, it shall not be necessary to furnish such statement as is required by (c) of this paragraph.

The applicant shall at any time furnish such additional information as the Secretary or his designated representative shall find to be necessary to the consideration of his application.

A single application may be made by any person for a license to sample, to inspect, to grade, and to weigh upon complying with all the requirements of this section.*† [Reg. 7, sec. 1]

CROSS REFERENCE: Inspectors, samplers, and weighers regulations under the Tobacco Inspection Act, see §§ 29.38-29.45.

103.53 Examination. Each applicant for license as a sampler, inspector, grader, or weigher, and each sampler, inspector, grader, or weigher, whenever requested by an authorized agent of the Department, shall submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed, and each such applicant, or licensee shall furnish the Bureau any information requested, at any time, in regard to his sampling, inspecting, grading, or weighing of tobacco.*† [Reg. 7, sec. 2]

103.54 Posting of license. Each sampler, inspector, grader, or weigher shall keep his license conspicuously posted at the place or

*†For statutory and source citations, see note to § 103.1.

office where he functions as a sampler, inspector, grader, or weigher, or in such other place as may be designated for the purpose by the Bureau.*† [Reg. 7, sec. 3]

103.55 Proper discharge of duties. Each sampler, inspector, grader, or weigher, according to the nature of his license, when requested shall, without discrimination, as soon as practicable, and upon reasonable terms, sample, inspect, grade, or weigh tobacco stored or to be stored in a licensed warehouse for which he holds a license, if such tobacco be offered to him under such conditions as will permit proper sampling, inspecting, grading, or weighing. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No official sample shall be drawn and no inspection, grade, or weight certificate shall be issued under the Act for tobacco not stored or to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

103.56 Official samples; sample tags and seals. (a) Each licensed sampler shall provide himself, unless provided by the warehouseman, with a sufficient quantity of tags of a kind and quality approved by the Chief of the Bureau or his representative for identifying the samples of tobacco drawn by him. There shall be clearly written or printed on the face of each tag (1) the number of the tag, (2) the caption "Official Tobacco Sample Drawn under the United States Warehouse Act", (3) the name and location of the licensed warehouse in which the tobacco is or is to be stored, (4) the identification number, in accordance with § 103.33, of the package from which the sample was drawn, except when sampled before being stored, in which case the private number and marks of the package shall be shown and a blank space left for said identification number, (5) the date on which the sample was drawn, and (6) a statement to the effect that the sample was drawn by a sampler licensed in accordance with the United States Warehouse Act and the regulations thereunder. One such tag shall be attached to each official sample of tobacco so as to preserve the identity of the sample.

(b) Each sampler shall seal each official sample of tobacco drawn by him so as to prevent the removal of the tag mentioned in paragraph (a) of this section, or the separation of the sample into parts without breaking the seal. Such seal shall show (1) the name of the sampler, (2) the license number of such sampler, and (3) the insignia "U. S. W. A."

(c) Each official sample taken from a package of tobacco stored or to be stored in a licensed warehouse shall be of such size and drawn and prepared in such manner as may be required by the Chief of the Bureau or his representative.*† [Reg. 7, sec. 5]

103.57 Inspection certificate; form. Each inspection certificate issued under the Act by an inspector shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (a) the caption "Tobacco Inspection Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d)

the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of inspecting, (g) a blank space for the purpose of showing the identification number of each package of tobacco, in accordance with § 103.33, (h) the keeping quality or condition of each package of tobacco at the time of inspecting, (i) a blank space designated for the purpose in which may be stated any condition that, in the opinion of the inspector, may affect the keeping quality of the tobacco, (j) that the certificate is issued by a licensed inspector under the United States Warehouse Act and the regulations thereunder, and (k) the signature of the inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

103.58 Grade certificate; form. Each grade certificate issued under the Act by a grader shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (a) the caption "Tobacco Grade Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d) the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of grading, (g) a blank space for the purpose of showing the identification number of each package, in accordance with § 103.33, (h) the grade, type, form, and condition of each package of tobacco at the time of grading, (i) the number of each official sample, if graded upon sample, (j) that the certificate is issued by a licensed grader, under the United States Warehouse Act and regulations thereunder, (k) a blank space designated for the purpose in which may be stated any general remarks on the condition of the tobacco, and (l) the signature of such licensed grader. In addition, the grade certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 7]

103.59 Weight certificate; form. Each weight certificate issued under the Act by a weigher shall be in a form approved for the purpose by the Bureau, and shall embody within its written or printed terms (a) the caption "Tobacco Weight Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d) the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of weighing, (g) a blank space for the purpose of showing the identification number of each package, in accordance with § 103.33, (h) the gross, tare, and net weight of each package of tobacco, (i) a blank space designated for the purpose in which may be stated any condition that in the opinion of the weigher may affect the weight of the tobacco, (j) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder, and (k) the signature of the weigher. In

*†For statutory and source citations, see note to § 103.1.

addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 8]

103.60 Combined certificate. A combined certificate of inspection, grade, and weight may be issued if such certificate meets all the requirements of §§ 103.57–103.61.*† [Reg. 7, sec. 9]

103.61 Issuance of certificates. Each licensed inspector, grader, or weigher shall, as soon as possible after inspecting, grading, or weighing any tobacco stored or to be stored in a licensed warehouse, issue an original and a first copy inspection, grade, or weight certificate, as the case may be, for such tobacco, and deliver both the original and first copy of the certificate to the warehouseman, in whose warehouse the tobacco is or is to be stored, except, when the functions of warehouseman, inspector, grader, and weigher are all performed by the same person, with the approval of the Chief of Bureau, inspection, grade, and weight certificates need not be issued.*† [Reg. 7, sec. 10]

103.62 Type, grade, form, or condition; statement. Whenever the type, grade, form, or condition of tobacco is required to be or is stated for the purposes of the Act and the regulations in this part, it shall be stated in accordance with §§ 103.69–103.73.*† [Reg. 7, sec. 11]

103.63 Licensees to permit and assist in examinations. Each sampler, inspector, grader, or weigher shall permit any authorized officer or agent of the Department to inspect or examine at any time his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, when requested, assist any such officer or agent in the inspection or examination mentioned in § 103.43, as far as any such inspection or examination relates to the performance of his duties as a licensee.*† [Reg. 7, sec. 12]

103.64 Suspension or revocation of licenses. Pending investigation the Secretary or his designated representative may, whenever he deems necessary, suspend the license of a sampler, inspector, grader, or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor submitted by the licensee, or when the licensee has ceased to perform the services for which licensed, the Secretary or his designated representative may, without hearing, suspend or revoke the license issued to such licensee. The Secretary, or his designated representative may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a sampler, inspector, grader, or weigher when such licensee has, in any manner, become incompetent or incapacitated to perform his duties as such licensee. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions in this section exist, it shall be his duty to notify in writing the Bureau. Before the license of any sampler, inspector, grader, or weigher is suspended or revoked, pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and

shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 103.78.*† [Reg. 7, sec. 13]

103.65 Return of suspended, revoked, terminated licenses. In case a license issued to a sampler, inspector, grader, or weigher is suspended or revoked by the Secretary or by his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the person to whom it was originally issued, and it shall be posted as prescribed in § 103.54.

Any license issued to a sampler, inspector, grader or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse is suspended, expires, or is revoked, and the license of such sampler, inspector, grader, or weigher shall be returned to the Secretary. In case such license shall apply to more than one warehouse, the Secretary or his designated representative shall issue a new license, omitting the names of the warehouses for which licenses have been suspended, terminated, or revoked. Such new license shall be posted as prescribed in § 103.54.*† [Reg. 7, sec. 14]

103.66 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to a sampler, inspector, grader, or weigher a duplicate thereof or a new license may be issued under the same or a new number.*† [Reg. 7, sec. 15]

103.67 Reports. Each sampler, inspector, grader, or weigher shall, from time to time, when requested by the Department, make reports on forms furnished for the purpose by the Bureau bearing upon his activities as such licensee.*† [Reg. 7, sec. 16]

103.68 Unlicensed persons; misrepresentation. No person shall in any way represent himself to be a sampler, inspector, grader, or weigher licensed under the Act unless he holds an unsuspended or unrevoked license issued under the Act.*† [Reg. 7, sec. 17]

TOBACCO CLASSIFICATION

103.69 Type, grade, form, or condition; statement. Whenever the type, grade, form, or condition of tobacco is required to be or is stated for the purposes of the Act and the regulations in this part, it shall be stated in accordance with §§ 103.69–103.73.*† [Reg. 8, sec. 1]

103.70 Standards to be used. Until such time as official tobacco standards of the United States are in effect, the type, grade, form, and condition of tobacco shall be stated, (a) in accordance with such standards, if any, as may be approved for the purpose by the Chief of the Bureau, or his representative, or (b) in the absence of any such standards, in accordance with the standards adopted by any tobacco organization or by the tobacco trade generally in the locality in which the warehouse is located, subject to disapproval by the Chief of the Bureau.*† [Reg. 8, sec. 2]

*†For statutory and source citations, see note to § 103.1.

103.71 Type, grade, form, or condition. Whenever the type, grade, form, or condition of tobacco is stated for the purposes of the Act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the tobacco. In determining the type, grade, form, or condition of a package of tobacco, the package as a whole shall be considered rather than parts of it which do not materially affect the value of the entire package and minor irregularities in the tobacco shall be overlooked.*† [Reg. 8, sec. 3]

103.72 Type, grade, and form; statement. Whenever the type, grade, or form of tobacco is stated for the purposes of the Act and the regulations in this part, it shall be based upon a careful and thorough examination of the package of tobacco or an official sample thereof. In case the tobacco in one part of a package or sample is inferior to that in other parts of the package or sample, the grade assigned to the tobacco shall be an average, considering the proportion that each part bears to the whole, and in case of a question as to which grade of two or more grades should be assigned to the tobacco, the lowest grade in question shall be assigned.*† [Reg. 8, sec. 4]

103.73 Statement of condition. Whenever the condition of tobacco is stated for the purposes of the Act and the regulations in this part, it shall be based upon a careful and thorough examination of the package of tobacco. In case any portion of a package of tobacco is found to be in a tangled, doubtful keeping, or nested condition, the condition stated for the whole package shall be based upon such tangled, doubtful keeping, or nested portion.*† [Reg. 8, sec. 5]

APPEAL ON SAMPLING OR CLASSIFICATION OF TOBACCO

103.74 New receipts; expenses. If a question arises as to the accuracy of an official sample, or whether the type, grade, form, or condition of the tobacco was correctly stated in a receipt or certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the tobacco involved may, after reasonable notice to the other party, submit the question to such committee as the Chief of Bureau may appoint. The decision of the committee shall be final, unless the Chief shall direct a review of the question. Immediately upon making their decision, the committee shall issue a certificate embodying their findings to the appellants and the licensee or licensees involved.

If the decision of the committee be that the sample was not representative of the package of tobacco, or that the type, grade, form, or condition was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of type, grade, form, or condition in accordance with the findings of the committee.

All necessary and reasonable expense of such appeal shall be borne by the losing party, unless the Chief of Bureau shall decide that the expense should be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

103.75 Bonds required; re State warehouses. Every person applying for a license or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part, except § 103.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of tobacco and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with § 103.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form, and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of tobacco and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

103.76 Publications. Publications under the Act and the regulations in this part shall be made in such media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 10, sec. 2]

103.77 Violations to be reported. Every person licensed under the Act shall immediately furnish the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

103.78 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except appeals, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by the Secretary or by his designated representative. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or his designated representative. Every written entry in the records

*†For statutory and source citations, see note to § 103.1.

of the Department made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

103.79 One document and one license to cover several products. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report, or other paper, document, or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.*† [Reg. 10, sec. 5]

103.80 Assets and bond; combination warehouses. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.*† [Reg. 10, sec. 6]

103.81 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 7]

PART 104—WOOL WAREHOUSES

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CROSS REFERENCE

Wool Standards: See Part 31.

DEFINITIONS

Section 104.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 104.1 to 104.74, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

† The source of §§ 104.1 to 104.74, inclusive, is Regulations for warehousemen storing wool under the United States Warehouse Act, May 12, 1931. (SRA, BAE 128)

104.2 Terms defined. For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486, as amended; 7 U.S.C. 241-273).

(b) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

- (c) **Secretary.** The Secretary of Agriculture of the United States.
- (d) **Designated representative.** The Chief of the Bureau.
- (e) **Chief of the bureau.** The Chief of the Bureau of Agricultural Economics.
- (f) **Department.** The United States Department of Agriculture.
- (g) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.
- (h) **Regulations.** Rules and regulations made under the Act by the Secretary.
- (i) **Warehouse.** Any suitable building, structure, or other protected inclosure in which wool is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which wool is or may be stored and for which a license has been issued under the Act.
- (j) **Warehouseman.** Any person lawfully engaged in the business of storing wool.
- (k) **License.** A license issued under the Act by the Secretary or his designated representative.
- (l) **Grader.** A person licensed under the Act by the Secretary or his designated representative, to grade and to certificate the grade of wool stored or to be stored in a licensed warehouse.
- (m) **Weigher.** A person licensed under the Act by the Secretary or his designated representative, to weigh and to certificate the weight of wool stored or to be stored in a licensed warehouse.
- (n) **Receipt.** A warehouse receipt.
- (o) **Kind of wool.** Grease, scoured, or pulled, and sorted or unsorted wool, or sorted or unsorted mohair.
- (p) **State.** A State, Territory, or District of the United States.*† [Reg. 1, sec. 2]

WAREHOUSE LICENSES

104.3 Application form. Applications for licenses and amendments to licenses under the Act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau may find to be necessary to the proper consideration of his application.*† [Reg. 2, sec. 1]

104.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of wool, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the intent of the Act for not issuing such license.*† [Reg. 2, sec. 2]

104.5 Net assets. Any warehouseman conducting a warehouse licensed or for which application for license has been made under the Act shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising

from the conduct of the warehouse, to the extent of at least \$15 per 1,000 pounds or fraction thereof of the maximum number of pounds of wool that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau: Provided, That the amount of such assets shall not be less than \$5,000 and need not be more than \$100,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 104.12 (b).*† [Reg. 2, sec. 3]

104.6 Posting license. Immediately upon receipt of his license or of any amendment thereto under the Act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted, until suspended or revoked, in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to depositors.*† [Reg. 2, sec. 4].

104.7 Suspension or revocation of license. Pending investigations, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor submitted by a warehouseman, the Secretary, or his designated representative may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary or his designated representative may, after opportunity for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is permanently suspended or revoked for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 104.72.*† [Reg. 2, sec. 5]

104.8 Return of suspended or revoked license. When a license issued to a warehouseman terminates or is suspended or revoked by the Secretary or his designated representative, it shall be returned

*†For statutory and source citations, see note to § 104.1.

to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 104.6: Provided, That in the discretion of the Secretary or his designated representative a new license may be issued without reference to the suspension.*† [Reg. 2, sec. 6]

104.9 Lost or destroyed warehouse license. Upon satisfactory evidence of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same number.*† [Reg. 2, sec. 7]

104.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman or any other person shall be designated or represented as licensed under the Act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such person or warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

104.11 Time of filing. Unless the warehouseman has previously filed with the Secretary the bond required by § 104.12 he shall file such bond within a time, if any, specified by the Secretary or his designated representative, such bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

104.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of \$15 per 1,000 pounds or fraction thereof of the maximum number of pounds of wool that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for the said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 104.11–104.15.

(b) In case of a deficiency in net assets as required by § 104.5, there shall be added to the amount of the bond fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary or his designated representative finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount fixed by him to meet such conditions.*† [Reg. 3, sec. 2]

104.13 Amendment to license. If application is made under § 104.3 for an amendment to a license, and no bond previously filed by the warehouseman under §§ 104.11–104.15 covers obligations arising under such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that such amendment will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

104.14 New bond required each year. Whenever a license has been issued for a period longer than 1 year, such license shall not be effective beyond 1 year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary or his designated representative, prior to the date on which that license would have expired had it been issued for but 1 year, subject to the provisions of § 104.13.*† [Reg. 3, sec. 4]

104.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary or his designated representative.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

104.16 Form. (a) Every receipt, whether negotiable or non-negotiable, issued for wool stored in a warehouse, shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the warehouseman and the designation, if any, of the warehouse; (2) the number of the license issued to the warehouseman; (3) a statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws; (4) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship; (5) a statement, conspicuously placed, whether the wool is insured by the warehouseman and, if insured, to what extent and whether against fire, lightning, or otherwise; (6) the kind of wool; (7) a blank space, designated for the purpose in which, if the wool is not commingled, a careful estimate of the shrinkage of the wool may be stated, or in which, if the wool is commingled, a careful estimate of the shrinkage of the wool shall be stated; (8) if the wool is not commingled, its identification in accordance with § 104.34; (9) if the wool is commingled, a clear and conspicuous notation to that effect, and the designation of the lot or pile of which it is a part on the face of the

*†For statutory and source citations, see note to § 104.1.

receipt; and (10) the words "Original negotiable" or "Original non-negotiable" according to the nature of the receipt, clearly and conspicuously printed thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for wool stored in a warehouse shall specify a period, not exceeding 1 year, for which the wool is accepted for storage under the Act and the regulations in this part. Upon demand and surrender of the old receipt, by the lawful holder thereof, at or before the expiration of the specified period, and cancelation of the receipt, the warehouseman, upon such lawful terms and conditions as he may grant at such time to other depositors of wool in his warehouse, if he then continue to act as a licensed warehouseman, shall issue a new receipt for a further specified period not exceeding 1 year and shall indicate thereon the date when the wool was first received.

(c) Every negotiable receipt issued for wool stored in a warehouse shall, in addition to complying with the requirements of paragraph (a) of this section, embody within its written or printed terms the following: (1) If the wool covered by such receipt was graded by a licensed grader or weighed by a licensed weigher, a statement to that effect; (2) a form of indorsement which may be used by the depositor or the lawful holder of the receipt, or the authorized agent of either, for showing the ownership of, and liens, mortgages, or other encumbrances on, the wool covered by the receipt.

(d) Whenever the grade is stated in a receipt issued for wool stored in a warehouse, such grade shall be stated in accordance with §§ 104.64–104.67.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor, as permitted by section 18 of the Act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, and for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.*† [Reg. 4, sec. 1]

104.17 Copies of receipts. Either actual copies or skeleton copies of all receipts shall be made, and all such copies, except those issued in lieu of the original, in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the words "Copy not negotiable."*† [Reg. 4, sec. 2]

104.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that

he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value at the time the bond is given of the wool represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 3]

104.19 Printing of receipts. No receipt shall be issued by a warehouseman except it be (a) in form prescribed by the Chief of the Bureau, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

104.20 Grade, weight, shrinkage of commingled wool. The grade, weight, and approximate shrinkage stated in a receipt for wool that is or is to be commingled shall be as determined by a grader and weigher duly licensed to grade and weigh and to certificate the grade and weight thereof under the Act and the regulations in this part.*† [Reg. 4, sec. 5]

104.21 Cancellation of receipts; delivery of wool. Except as otherwise provided in the regulations in this part, all receipts shall be canceled by the warehouseman when the wool covered by such receipts is to be delivered, is to be graded, sorted, or scoured, or its identity is to be disturbed in any manner.*† [Reg. 4, sec. 6]

104.22 Partial delivery of wool. If a warehouseman deliver a part only of a lot of wool for which he has issued a negotiable receipt, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the wool.*† [Reg. 4, sec. 7]

104.23 Receipts; return and cancellation. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver wool for which he has issued a negotiable receipt until such receipt has been returned to him and canceled, and shall not deliver wool for which he has issued his nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery or his authorized agent a written order for delivery and a signed acknowledgement thereof. Such order shall specify the receipt involved, the grade of the wool if stated on the receipt, and the amount of wool to be delivered.*† [Reg. 4, sec. 8]

*†For statutory and source citations, see note to § 104.1.

104.24 Nonnegotiable receipts. Each person to whom a nonnegotiable receipt is issued or the holder thereof shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of wool covered by such receipt, together with the genuine bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of wool covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 9]

104.25 Omission of grade; no compulsion by warehouseman. No licensed warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any wool in his warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 10]

DUTIES OF LICENSED WAREHOUSEMAN

104.26 Method of storing wool. (a) Each warehouseman shall, subject to the provisions of section 13 of the Act (39 Stat. 488; 7 U.S.C. 254), receive for storage in his warehouse all wool offered for storage the identity of which is to be preserved during the storage period, and also, if he so elects, as provided elsewhere in the regulations in this part, all wool which is to be commingled. Each warehouseman who has elected to store in his warehouse wool which is to be commingled shall, when so requested in writing as to any wool by the depositor thereof, mingle such wool with other wool, if any, of the same kind, grade, and approximate shrinkage: Provided, That no wool may be commingled for which a receipt is outstanding unless the receipt clearly indicates that such wool is or is to be commingled. No warehouseman shall commingle with wool belonging to any depositor wool which is owned by him solely, jointly, or in common with others.

(b) Before making any change in his policy as to whether he will store in his warehouse wool which is to be commingled, each warehouseman shall file with the Chief of the Bureau a statement in writing showing the proposed change, the effective date thereof, and the reasons therefor.*† [Reg. 5, sec. 1]

104.27 Insurance; requirements. (a) Each warehouseman, when so requested in writing as to any wool by the depositor thereof or lawful holder of the receipt covering such wool, shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such wool while in his custody as a warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested against loss or damage by fire or lightning. When insurance is not carried in the warehouseman's name the receipts shall show that the wool is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance

to the extent requested, he shall, orally, or by telegraph, or by telephone immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all wool stored in his warehouse.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 104.6, and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice stating briefly the conditions under which the wool will be insured against loss or damage by fire or lightning.

(c) Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

(d) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 2]

104.28 System of accounts. (a) Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Department, which shall show for each lot of wool received, its weight, the number of bags or bales, its grade when its grade is required to be, or is, ascertained, its location in the warehouse, the dates received for and delivered out of storage, the receipts issued and canceled, and a separate record for each depositor of wool, and such accounts shall include a detailed report of all moneys received and disbursed and of all insurance policies taken out and canceled. In addition, for wool the identity of which is to be preserved, the accounts shall show its identification in accordance with § 104.34, and for wool the identity of which is not preserved the accounts shall show the designation of the lot or pile of which it is a part and the estimate of the shrinkage of such wool stated on the receipt therefor.

(b) Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receiptbook, copies of receipts issued, and canceled receipts, except that, with the written approval of the Department upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancelation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 3]

104.29 Reports; copies. (a) Each warehouseman shall from time to time make such reports as the Chief of the Bureau or his repre-

*†For statutory and source citations, see note to § 104.1.

sentative may require, on forms furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.

(b) Each warehouseman shall keep on file, as a part of the records by the warehouse, for such period as may be prescribed by the Department, an exact copy of each such report submitted by such warehouseman under this section and § 104.36.*† [Reg. 5, sec. 4]

104.30 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to Washington or to such offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as may be designated of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 5]

104.31 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted the warehouseman shall file with the Bureau a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously, in the place prescribed by § 104.6, and at such other place, accessible to the public, as the Department may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 6]

104.32 Signs; posting; design. (a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain suitable signs on the licensed warehouse, both on the inside and exterior walls, and particularly on doors and usual places of entry, in such manner as would ordinarily be calculated to give the public notice of his tenance of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall show the following: (1) The name and license number of the licensee, (2) the name of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "Public warehouse."

(c) Such other wording or lettering as is not inconsistent with the purposes of the Act and the regulations in this part and is approved by the Chief of the Bureau may appear in the sign or signs.

(d) Upon the expiration of his license and during any period of suspension thereof the warehouseman shall immediately remove all references to the license.

(e) The warehouseman shall not permit any sign to remain on his licensed property which might lead to confusion as to the tenancy.*† [Reg. 5, sec. 7]

104.33 Examination of warehouses. Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of

which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent the assistance necessary to enable him to make any such inspection or examination under this section.*† [Reg. 5, sec. 8]

104.34 Identity-preserved wool. Upon the acceptance by a warehouseman for storage in his warehouse of any lot of wool, the identity of which is to be preserved, he shall store, or cause to be stored, such wool in an individual section or space designated by lot numbers, or by letters, or other clearly distinguishing words or signs, permanently and securely affixed thereto, or shall so mark the container or containers of such wool or so place the wool in the warehouse that its identity will not be lost during the storage period.*† [Reg. 5, sec. 9]

104.35 Arrangement of wool. Each warehouseman shall arrange the bags or bales of wool in his warehouse so that each lot can be identified and the bags or bales in each lot readily checked. If tiered the bags or bales may be stored in double rows but one end of each bag so tiered shall face an aisle. Bulk wool shall be so stored that it may readily be measured and the quantity therein estimated. To each lot whether of bagged, baled, or bulk wool shall be secured a tag, which shall always be accessible and plainly visible, showing the lot or pile number and the number of bags or bales and, if bulk wool, the pounds of wool therein. For any wool which has been temporarily removed from a lot for display, sampling, or other purposes proper notation shall be made on the reverse side of the lot tag showing the quantity so removed and its location. Such notation shall be stricken out upon the return of the wool to its lot.*† [Reg. 5, sec. 10]

104.36 Wet or fire-damaged wool. A warehouseman shall not store any wool that is excessively wet in contact with any other wool in the warehouse. A warehouseman shall not store in the same compartment with wool that has not been damaged by fire any bag or lot of wool that has been damaged by fire until the fire-damaged wool has been removed from the bag or lot, and then he shall not store it in contact with wool that has not been so damaged.*† [Reg. 5, sec. 11]

104.37 Care of wool and other commodities. (a) Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to wool in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. The warehouseman shall not handle or store wool in such manner as may tend to injure or damage the wool.

(b) If, at any time, a warehouseman shall handle or receive wool otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to it as not to endanger the wool in his custody as a licensed warehouseman or impair the insurance thereon or his ability to meet his obligations and perform his duties under the Act and the regulations in this part.*† [Reg. 5, sec. 12]

*†For statutory and source citations, see note to § 104.1.

104.38 Warehouse to be kept clean. Each warehouseman shall keep his warehouse clean and free from trash, dust, rubbish, and scattered wool. He shall also exercise every precaution to keep his warehouse free of moths and other pests.*† [Reg. 5, sec. 13]

104.39 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving wool for storage and delivering wool out of storage every business day, excepting Saturdays when the period may be shorter, for a period of not less than 6 hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section.

(b) If the warehouse is not kept open regularly as required in paragraph (a) of this section, the warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver wool stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor.*† [Reg. 5, sec. 14]

104.40 Excess storage. If at any time a warehouseman is offered wool in such quantity that to store it would result in exceeding his licensed capacity, he shall so arrange the wool as not to obstruct free access thereto and the proper use of sprinkler or other fire protection equipment provided for such warehouse and shall immediately apply to the Chief of the Bureau to have the licensed capacity increased. Until such increase is granted, no receipt shall be issued for such wool.*† [Reg. 5, sec. 15]

104.41 Removal of wool from warehouse. Unless it becomes absolutely necessary to protect the wool, no wool covered by receipts issued under the Act shall be removed from a warehouse, except as provided in § 104.42, and immediately upon any such removal the warehouseman shall notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 16]

104.42 Delivery of wool. Except as may be provided by law or by the regulations in this part, each warehouseman (a) upon proper presentation of a receipt for commingled wool and upon payment or tender of all advances and legal charges shall deliver to the lawful holder of such receipt wool of the kind, grade, quantity, and approximate shrinkage named in such receipt or in the grade certificate covering the particular lot of wool specified by the receipt, and (b) upon proper presentation of a receipt for any wool, the identity of which was to be preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto the identical wool so stored in his warehouse.*† [Reg. 5, sec. 17]

104.43 Signers of warehouse receipts; filing names. Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for

the warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.*† [Reg. 5, sec. 18]

104.44 Weighing apparatus; examination. Any weighing apparatus used for ascertaining the weight stated in a receipt or certificate issued for wool stored in a warehouse shall be subject to examination by any officer or agent of the Department. If the Department shall disapprove any such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any wool for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 19]

104.45 Fire loss; report by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Department the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 20]

FEES

104.46 License fees; grader's and weigher's. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license, or any amendment thereto, and provided he has applied for such license, a fee of \$3 for each license issued to a grader and/or weigher.*† [Reg. 6, sec. 1]

104.47 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of \$2 for each 100,000 pounds of the storage capacity or fraction thereof, determined in accordance with § 104.12 (a), but in no case less than \$10 nor more than \$200, and for each re-examination or reinspection applied for by such warehouseman a fee, based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.*† [Reg. 6, sec. 2]

104.48 Advance deposit. Before any warehouseman's license or amendment thereto is granted, or an original examination or inspection, or re-examination or reinspection, applied for by a warehouseman, is made, pursuant to the regulations in this part, the warehouseman shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, or post-office or express money order payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."*† [Reg. 6, sec. 3]

104.49 Return of excess deposit. The disbursing clerk of the department shall hold in his custody each advance deposit made

*†For statutory and source citations, see note to § 104.1.

under § 104.48 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

GRADERS AND WEIGHERS

104.50 Applications. (a) Applications for licenses to grade or to weigh wool under the Act shall be made to the Department on forms furnished for the purpose.

(b) Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) the name and location of the warehouse or warehouses licensed, or for which application for license has been made under the Act, in which wool sought to be graded or weighed under such license is or may be stored; (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose; (3) satisfactory evidence that he is competent to perform the kind of service for which a license is sought; (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations so far as the same may relate to him; and (5) such other information as the Department may deem necessary.

(c) A single application may be made by any person for a license to grade and weigh upon complying with the requirements of this section.*† [Reg. 7, sec. 1]

104.51 Examination. Each applicant for a license as a grader or weigher and each grader or weigher shall, whenever requested by an authorized agent of the Department designated by the Chief of the Bureau for the purpose, submit to an examination or test to show his ability properly to perform the duties of a licensed grader or weigher.*† [Reg. 7, sec. 2]

104.52 Posting of license. Each grader or weigher shall keep his license conspicuously posted in the office of the warehouse where most of the grading or weighing is done.*† [Reg. 7, sec. 3]

104.53 Proper discharge of duties. Each grader and each weigher, when requested, shall without discrimination, as soon as practicable, and upon reasonable terms, grade or weigh and certificate the grade or weight of wool stored or to be stored in a warehouse for which he holds a license, if such wool be offered to him under such conditions as permit proper grading or weighing and the determination of the grade or weight thereof. In every case when the graded wool is to be commingled the grader shall make a careful estimate of its shrinkage. Each such grader or weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No grade certificate or weight certificate shall be issued under the Act for wool not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

104.54 Grade certificate; form. Each grade certificate issued under the Act by a grader shall be in a form approved for the purpose by the Department, and shall embody within its written or printed terms: (a) The caption "United States Warehouse Act, Wool Grade Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the wool is or is to be stored; (d) the date of the certificate; (e) the location of the wool at the time of grading; (f) the designation of the lot from which the wool was taken; (g) if the wool is not to be commingled, its identification in accordance with § 104.34; (h) the consecutive number of the certificate; (i) the pounds of each grade of wool covered by the certificate; (j) a blank space designated for the purpose in which, if the identity of the wool is to be preserved, a careful estimate of the shrinkage of the wool may be stated, or in which, if the wool is to be commingled, a careful estimate of the shrinkage of the wool shall be stated; (k) the grade of the wool, as determined by such grader in accordance with §§ 104.64–104.67; (l) the lot or pile number assigned to the grade; (m) the kind of wool; (n) that the certificate is issued by a licensed grader under the United States Warehouse Act and the regulations thereunder; and (o) the signature of the grader who graded the wool. In addition the grade certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 5]

104.55 Weight certificate; form. Each weight certificate issued under the Act by a weigher shall be in the form approved for the purpose by the Department and shall embody within its written or printed terms: (a) The caption "United States Warehouse Act, Wool Weight Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the wool is or is to be stored; (d) the date of the certificate; (e) if the identity of the wool is to be preserved, its identification in accordance with § 104.34; (f) the consecutive number of the certificate; (g) the weight of the wool and, if the wool be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact; (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such weigher. In addition the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

104.56 Combined certificate. The grade and weight of any wool, ascertained by a grader and weigher, may be stated on a certificate meeting the combined requirements of §§ 104.54, 104.55, if the form of such certificate shall have been approved for the purpose by the Department.*† [Reg. 7, sec. 7]

104.57 Copies of certificates. Each grader and each weigher shall keep for a period of one year in a place accessible to persons financially interested, a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certifi-

*†For statutory and source citations, see note to § 104.1.

cate with the warehouse in which the wool covered by the certificate is stored.*† [Reg. 7, sec. 8]

104.58 Inspections. Each grader and each weigher shall permit any duly authorized officer or agent of the Department to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 104.33, as far as any such inspection or examination relates to the performance of his duties as a licensed grader or licensed weigher.*† [Reg. 7, sec. 9]

104.59 Reports. Each grader and each weigher shall, from time to time, when requested by the Department, make reports on forms furnished for the purpose by the Bureau bearing upon his activities as such grader or weigher.*† [Reg. 7, sec. 10]

104.60 Suspension or revocation of licenses. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of a grader or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor submitted by the licensee, or when the licensee has ceased to perform the services for which licensed, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such licensee. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a grader or weigher when such licensee has, in any manner, become incompetent or incapacitated to perform his duties as such licensee. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions in this section exist, it shall be his duty to notify in writing the Chief of the Bureau. Before the license of any grader or weigher is permanently suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 104.72.*† [Reg. 7, sec. 11]

104.61 Return of suspended, revoked, terminated licenses. (a) In case a license issued to a grader or weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the grader or weigher to whom it was originally issued, and it shall be posted as prescribed in § 104.52.

(b) Any license issued under the Act and the regulations in this part to a grader or weigher shall automatically terminate as to any ware-

house whenever the license of such warehouse shall be suspended or revoked. Thereupon the license of such grader or weigher shall be returned to the Secretary. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to him a new license, omitting the names of the warehouses covering which licenses have been suspended or revoked. Such new license shall be posted as prescribed in § 104.52.*† [Reg. 7, sec. 12]

104.62 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to a grader or weigher, a duplicate thereof may be issued under the same number.*† [Reg. 7, sec. 13]

104.63 Unlicensed persons; misrepresentation. No person shall in any way represent himself to be a grader or weigher licensed under the Act unless he holds an unsuspended and unrevoked license issued under the Act.*† [Reg. 7, sec. 14]

WOOL GRADING

104.64 Statement of grades. Whenever the grade of wool is required to be or is stated for the purposes of the Act or the regulations in this part, it shall be stated in accordance with §§ 104.64–104.67.*† [Reg. 8, sec. 1]

104.65 Wool grades; adoption; terms defined. (a) The official wool grades of the United States within their scope are hereby adopted as the official wool standards for the purposes of the Act and the regulations in this part.

(b) Factors other than those included in the official grades and for which no standards of the United States are in effect shall be stated in accordance with any standards approved for the purpose of the Bureau.

(c) Wool which is reduced in value because of the presence of extraneous matter, or irregularity, or other defect not affecting its grade, such as wrapped with sisal or binder twine, excessively wrapped, dead, cotted, burry, seedy, black, gray, or colored, **damaged**, carbonizing, kempy, or false packed, shall be so designated.

(d) For the purpose of this section the following terms used in connection with or to describe wool, shall be construed respectively to mean:

Excessively wrapped. Wool tied with more wrappings of twine than is necessary to bundle properly folded and rolled fleeces.

Dead wool. Wool from dead sheep.

Cotted wool. Wool that has felted or matted on the sheep's back.

Burry wool. Wool containing burrs removable by hand or mechanical means.

Seedy wool. Wool containing seeds, chaff, or other vegetable matter.

Black, gray, or colored wool. Entire fleeces or portions of fleeces of black, gray, or colored wool.

Damaged wool. Wool damaged by fire, water, moisture, or moths.

Carbonizing wool. Wool from which the burrs or other substances can be removed only by carbonizing.

*†For statutory and source citations, see note to § 104.1.

Kempy wool. Wool containing kemps, opaque, white fibers, found generally in fleeces of old or sick sheep.

False packed. A fleece so packed as fraudulently to conceal substances entirely foreign to wool.

Lamb's wool. The first fleeces shorn from young sheep.

Bucks. The heavy, oily fleeces shorn from male sheep.

Bright. Bright, white, lustrous wool.

Semibright. Lustrous wool dulled in color by the foreign matter it contains.*† [Reg. 8, sec. 2]

CROSS REFERENCE: For official standards of the United States for grades of wool, see Part 31.

104.66 Examination; basis of grade. Whenever the grade of wool is required to be or is stated for the purposes of the Act or the regulations in this part, it shall be based upon a careful and thorough examination of the wool, and the grading thereof shall be made under conditions which permit the determination of its true grade.*† [Reg. 8, sec. 3]

104.67 Wool standard forms. Each warehouseman and grader shall keep himself provided with, or have access to, a set of practical forms of the official wool standards of the United States.*† [Reg. 8, sec. 4]

ARBITRATION

104.68 Wool arbitration. (a) Except when agreements have been made in accordance with the United States Arbitration Act (43 Stat. 883; 9 U.S.C. 1-15), in case a question arises as to whether the condition, grade, or shrinkage of the wool was correctly stated in a receipt, or grade certificate issued under the Act and the regulations in this part the licensed warehouseman or the lawful holder of the receipt or certificate concerned, after reasonable notice to the other interested party, may submit the question to an arbitration committee for determination in accordance with this section.

(b) Such arbitration committee shall be composed of three or more disinterested persons who are competent to pass upon the questions involved. If there be a local trade organization such as a board of trade, chamber of commerce, exchange, or inspection department which provides such a committee under a rule or practice acceptable to the Chief of the Bureau for the purpose, such a committee may determine the question. In the absence of such a committee, or if for any good reason not inconsistent with the Act and the regulations in this part such committee is not acceptable to either of the parties interested, the complainant and the other party shall each name a member, and the two members so named shall select a third member, who shall constitute the arbitration committee. Each member of any such committee shall at all times be subject, for good cause, to the disapproval of the Chief of the Bureau, and in case any member is so disapproved he shall not thereafter act on an arbitration committee which is considering any questions relating to the same lot of wool unless such disapproval be withdrawn.

(c) It shall be the duty of the interested parties to acquaint the arbitration committee with the exact nature of the question to be

determined and all the necessary facts and to permit the committee to examine the receipt, certificate, or wool involved or any papers or records needed for the determination of the question. The committee shall make a written finding setting forth the question involved, the necessary facts, and its determination. Such findings or a true copy thereof shall be filed as a part of the records of the licensed warehouseman involved. It may dismiss the matter without determination upon the request of the complainant, or for noncompliance by the complainant with the law or the regulations in this part, or because it is without sufficient evidence to determine the question, in which case the decision shall be deemed to be against the complainant. Except as otherwise provided by law, its decision shall be final for the purposes of the Act and the regulations in this part, unless the Chief of the Bureau shall direct a review of the question. Any necessary and reasonable expense of such arbitration shall be borne by the losing party unless the committee shall decide that such expense shall be prorated between the parties.

(d) If the decision of the arbitration committee be that the grade, condition, or shrinkage was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it, and he shall substitute therefor one conforming to the decision of the committee.*† [Reg. 9, sec. 1]

MISCELLANEOUS

104.69 Bonds required; re State warehouses. Every person applying for a license or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part, except § 104.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act to accept the custody of wool and to store the same in any of said warehouses may, in lieu of a bond or bonds, complying with §§ 104.11, 104.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount, not less than \$5,000, as he shall prescribe, to insure the performance by such person with respect to the acceptance of the custody of wool and its storage in the warehouses in such system for which licenses are or may be issued of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

*†For statutory and source citations, see note to § 104.1.

104.70 Publications. Publications under the Act and the regulations in this part shall be made in such media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 10, sec. 2]

104.71 Violations to be reported. Every person licensed under the Act shall immediately furnish the Department any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

104.72 Procedure in hearings. For the purpose of a hearing under the Act or the regulations in this part, except § 104.68, the licensee involved shall be allowed a reasonable time, fixed by the Secretary, or his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary or his designated representative. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or his designated representative. Every written entry in the records of the Department, made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary, or his designated representative, for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

104.73 One document and one license to cover several products. (a) A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report, or other paper, document, or proceeding relating to such warehouse shall be sufficient unless otherwise directed by the Bureau.

(b) Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.*† [Reg. 10, sec. 5]

104.74 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in

the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*†
[Reg. 10, sec. 6]

PART 105—BROOMCORN WAREHOUSES

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*†For statutory and source citations, see note to § 104.1.

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DEFINITIONS

Section 105.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 105.1 to 105.77, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 105.1 to 105.77, inclusive, (except for the amendments noted in the text,) is Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as amended May 16, 1924. (SRA, BAE 84)

105.2 Terms defined. For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(b) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) **Secretary.** The Secretary of Agriculture of the United States.

(d) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(e) **Regulations.** Rules and regulations made under the Act by the Secretary.

(f) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(g) **Warehouse.** Any building, structure, or other protected inclosure in which broomcorn is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which broomcorn is or may be stored.

(h) **License.** A license issued under the Act by the Secretary.

(i) **Licensed warehouseman.** A warehouseman licensed as such under the Act.

(j) **Licensed warehouse.** A warehouse for the conduct of which a license has been issued.

(k) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(l) **Licensed inspector.** A person licensed under the Act by the Secretary to inspect, to sample, and to certificate the variety and condition of broomcorn, including its baling.

(m) **Licensed grader.** A person licensed under the Act by the Secretary to grade and to certificate the grade of broomcorn stored or to be stored in a licensed warehouse.

(n) **Licensed weigher.** A person licensed under the Act by the Secretary to weigh and certificate the weight of broomcorn stored or to be stored in a licensed warehouse.

(o) **Condition.** Any state of broomcorn which is not covered by variety or grade and which has a material bearing on its value, including its keeping quality.

(p) **Grade.** That combination of factors, such as length, color, fiber, and other elements which will show the quality of the broomcorn.

(q) **Properly baled.** A well-made bale bound by five strong wires securely fastened and at least two tie wires so fastened to the outer band wires as to hold them from slipping.

(r) **Bale.** A bale of broomcorn.

(s) **Damaged broomcorn.** Any portion of a bale other than the exterior which is unfit for use due to heating, mold, rot, or other cause.

(t) **Trash.** Leaves, roots, or other worthless material incident to harvesting.

(u) **Sticks.** Stemmy broomcorn with little or no fiber.

(v) **Crooks.** Broomcorn which became bent in a U or similar shape while growing.

(w) **Receipt.** A warehouse receipt.

(x) **State.** A State, Territory, or District of the United States.*† [Reg. 1, sec. 2]

WAREHOUSE LICENSES

105.3 Application forms. Applications for licenses under sections 4 and 9 of the Act (46 Stat. 1463, 1464; 7 U.S.C. 244, 248), and for modifications or extensions of licenses under section 5 of the Act (42 Stat. 1282; 7 U.S.C. 245) shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application by the Secretary.*† [Reg. 2, sec. 1]

105.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary that the warehouse is not suitable for the proper storage of broomcorn, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.*† [Reg. 2, sec. 2]

105.5 Net assets required. The warehouseman conducting a warehouse licensed or for which application for license has been made, shall have and maintain above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$2 per bale of the maximum number of bales of broomcorn that the warehouse will accommodate when stored in the manner customary to the warehouse for which such assets are required, as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000 and need not be more than \$100,000. In case such

*†For statutory and source citations, see note to § 105.1.

warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 105.13 (b).*† [Reg. 2, sec. 3]

105.6 Modification or extension of license. Each application for a modification or extension of a license under section 5 of the Act (42 Stat. 1282; 7 U.S.C. 245) shall be made to the Secretary, upon a form prescribed for the purpose and furnished by the Chief of the Bureau, shall be in English, shall be signed by the applicant, and shall be filed with the Secretary not less than 30 days before the date of the termination of the license then in effect.*† [Reg. 2, sec. 4]

105.7 License shall be posted. Immediately upon receipt of his license, or of any modification or extension thereof under the Act, the licensed warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 5]

105.8 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, cancel a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) shall come into existence, it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is suspended, revoked, or canceled for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 105.75.*† [Reg. 2, sec. 6]

105.9 Return of suspended or revoked warehouse license. In case a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, such license shall be returned to the Secretary when requested. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 105.7.*† [Reg. 2, sec. 7]

105.10 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same or a new number at the discretion of the Secretary.*† [Reg. 2, sec. 8]

105.11 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.*† [Reg. 2, sec. 9]

WAREHOUSE BONDS

105.12 Time of filing. Unless the warehouseman has previously filed with the Secretary the bond required by § 105.13, he shall file such bond within a time, if any specified by the Secretary, said bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

105.13 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of \$2 per bale of the maximum number of bales that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for the said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 105.12–105.16.

(b) In case of a deficiency in net assets under this section, there shall be added to the amount of the bond fixed in accordance with paragraph (a) of this section an amount equal to such deficiency.

(c) In case the Secretary finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraph (a) of this section a further amount, fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

105.14 Amendment to license. In case an application is made under § 105.3, for a modification or an extension of a license and no

*†For statutory and source citations, see note to § 105.1.

bond previously filed by the warehouseman under §§ 105.12–105.16 covers obligations arising under such modification or extension, the warehouseman shall, when notice has been given by the Secretary that such modification or extension will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman, and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

105.15 New bond required each year. Whenever a license has been issued for a period longer than one year, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary prior to the date on which said license would have expired had it been issued for but one year, subject to the provisions of § 105.14.*† [Reg. 3, sec. 4]

105.16 Approval of bond. No bond, amendment, or continuation thereof shall be accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

105.17 Form. (a) Every receipt, whether negotiable or non-negotiable, issued for broomcorn stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws; (4) the tag number given to each bale of broomcorn in accordance with § 105.32; (5) a statement conspicuously placed, whether or not the broomcorn is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, and tornado; (6) a blank space designated for the purpose in which the condition shall be stated; (7) a blank space designated for the purpose in which variety shall be stated; (8) the crop year in which the broomcorn was grown; and (9) the words “Not negotiable”, “Nonnegotiable”, or “Negotiable”, according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for broomcorn stored in a licensed warehouse shall specify a period, not exceeding one year, for which the broomcorn is accepted for storage under the Act and the regulations in this part, but upon demand and the surrender of the old receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of broomcorn in the warehouse, shall issue a

new receipt for a further specified period not exceeding one year, or, if he continues to act as a public warehouseman but not as a licensed warehouseman, issue a new nonlicensed receipt; provided, it is actually determined that there has been no deterioration in the quality of the broomcorn.

(c) Every receipt issued for broomcorn stored in a licensed warehouse shall, in addition to complying with the requirements of paragraphs (a) and (b) of this section, embody within its written or printed terms, the following: (1) If the broomcorn covered by such receipt was inspected by a licensed inspector, graded by a licensed grader or weighed by a licensed weigher, a statement to that effect; (2) a form of indorsement which may be used by the depositor or the lawful holder of the receipt or the authorized agent of either for showing the ownership of, and liens, mortgages, or other encumbrances on the broomcorn covered by the receipt.

(d) Whenever the grade or other class of the broomcorn is required to be, or is, stated in a receipt issued for broomcorn stored in a licensed warehouse, such grade or other class shall be stated in the receipt in accordance with §§ 105.66–105.70.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor".

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.*† [Reg. 4, sec. 1]

105.18 Copies of receipts. Carbon copies of all receipts shall be made. All such copies, except those issued in lieu of the original in case of lost or destroyed receipts, shall, if there be no statute of the United States or law of a State providing otherwise, have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable".*† [Reg. 4, sec. 2]

105.19 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set forth in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the broomcorn represented by the lost or destroyed receipt. Such bond shall be in a form approved for the

*†For statutory and source citations, see note to § 105.1.

purpose by the Secretary, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, to the extent of double the amount of the bond.*† [Reg. 4, sec. 3]

105.20 Approval of form of receipt. No receipt shall be issued under the Act until its form has been approved by the Chief of the Bureau, who shall make such requirements with respect to it as he may deem necessary to insure compliance with the Act and the regulations in this part. For this purpose the warehouseman shall submit two final proof copies of the proposed form printed on paper identical to that on which the final receipts will be printed.*† [Reg. 4, sec. 4]

105.21 Partial delivery of broomcorn. If a warehouseman delivers part only of a lot of broomcorn for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the broomcorn on which shall be stated the date of the receipt first issued by the warehouseman to cover the lot of which the undelivered portion forms a part.*† [Reg. 4, sec. 5]

105.22 Return of receipts before delivery of broomcorn. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver broomcorn for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver broomcorn for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written acknowledgment thereof.*† [Reg. 4, sec. 6]

105.23 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any broomcorn in his warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 7]

DUTIES OF LICENSED WAREHOUSEMAN

105.24 Certain broomcorn not acceptable for storage. A warehouseman shall not receive for storage in his licensed warehouse any broomcorn that is wet, sappy, improperly baled, damaged, or that contains more than 10 percent by weight of seed, or that contains more than 5 percent by weight of trash, nor shall he accept any broomcorn containing crooks or sticks unless such crooks or sticks are separately baled and in such cases the receipts shall be plainly marked "Crooks" or "Sticks", as the case may be.*† [Reg. 5, sec. 1]

105.25 Insurance; requirements. (a) Each licensed warehouseman when so requested in writing as to any broomcorn by the deposi-

tor thereof or lawful holder of the receipt covering such broomcorn, shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such broomcorn while in his custody as a licensed warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested, against loss or damage caused by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipt shall show that the broomcorn is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all broomcorn stored in his warehouse.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 105.7, and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice, stating briefly the conditions under which the broomcorn will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 2]

105.26 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premium, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

105.27 Care of broomcorn. Each warehouseman shall at all times exercise such care in regard to broomcorn in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.*† [Reg. 5, sec. 4]

105.28 Care of nonlicensed broomcorn or other commodities. If, at any time, a warehouseman shall handle or store broomcorn other than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise care with respect to it, as not to endanger the broomcorn in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the licensed warehouseman shall store commodities other than those for which he is licensed to store, a nonlicensed receipt shall be issued which shall contain in its terms a provision that said

*†For statutory and source citations, see note to § 105.1.

commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of or the insurance on the broomcorn covered by licensed receipts.*† [Reg. 5, sec. 5]

105.29 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety, approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancelation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 6]

105.30 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the Bureau a copy of his rules if any, and a schedule of the charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each licensed warehouseman shall keep exposed conspicuously in the place prescribed by § 105.7, and at such other place, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedules of charges.*† [Reg. 5, sec. 7]

105.31 Business hours. (a) Each licensed warehouse shall be kept open for the purpose of receiving broomcorn for storage and delivering broomcorn out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver broomcorn stored in such warehouse, upon lawful demand and surrender of the receipt.*† [Reg. 5, sec. 8]

105.32 Numbered tags to be attached to bales. (a) Each warehouseman shall, upon acceptance of any bale of broomcorn for storage, immediately attach, unless there be already attached thereto, a numbered tag of good quality which shall identify the bale. Such tag either shall be made of reasonably heavy waterproof paper or linen, with reinforced eyelet, and be attached to the bale with a flexible rustproof wire, or shall be made of such other material and attached by such other means as shall be approved by the Chief of the Bureau or his representative. The tags shall be attached in numerical sequence or any series of sequences clearly distinguishable from each other. The warehouseman shall also attach to each lot at such place where it will be plainly visible, a tag of good quality which shall identify the lot. Such tag shall show the lot number, the identification mark on each bale, the number of the receipt issued to cover such broomcorn, the number of bales in the lot, the grade of the broomcorn if determined, and the weight at the time the broomcorn entered storage.

(b) Each warehouseman shall so store each lot of broomcorn for which a receipt under the Act has been issued that the lot tag thereon, required by paragraph (a) of this section, is visible and readily accessible, and shall arrange all bales in his licensed warehouse so as to permit an accurate count of the number of bales in each lot.*† [Reg. 5, sec. 9]

105.33 System of accounts. Each warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Chief of the Bureau or his authorized representative, which will show for each lot of broomcorn the name of the depositor, the lot and individual bale tag numbers of each lot, mentioned in § 105.32, the weight of each bale or lot, the variety and condition of the broomcorn, the grade when the same is required to be, or is, ascertained, the location, the dates received for and delivered out of storage, and the receipts issued and canceled, a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effected and canceled insurance policies.*† [Reg. 5, sec. 10]

105.34 Reports. Each warehouseman shall, from time to time, when requested by the Chief of the Bureau, make such reports, as the Chief of the Bureau may require, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.*† [Reg. 5, sec. 11]

105.35 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the licensed warehouse, for such period as may be prescribed by the Chief of the Bureau an exact copy of each such report submitted by such warehouseman under §§ 105.34, 105.45.*† [Reg. 5, sec. 12]

105.36 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to Washington or to such field offices of the Bureau as may be designated from time to time. For the purposes of this section only such portion as the Bureau may designate of each canceled

*†For statutory and source citations, see note to § 105.1.

receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 13]

105.37 Inspections and examinations of warehouses. Each warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine any licensed warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 14]

105.38 Weighing apparatus. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for broomcorn stored in a licensed warehouse, shall be subject to examination by any officer or agent of the Department of Agriculture designated by the Chief of the Bureau for such purpose. If the Bureau shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any broomcorn for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 15]

105.39 Warehouse to be kept clean. Each warehouseman shall keep his warehouse clean and free from trash, rubbish, and scattered broomcorn, and shall also keep his warehouse free of rats and other pests.*† [Reg. 5, sec. 16]

105.40 Warehouse to be kept light. A warehouseman shall keep his warehouse sufficiently lighted so that the commercial value of the broomcorn may be easily determined upon examination.*† [Reg. 5, sec. 17]

105.41 Care in storage. A warehouseman shall so store and handle broomcorn as not to injure or damage it in any manner.*† [Reg. 5, sec. 18]

105.42 Excess storage. If at any time a warehouseman shall store broomcorn in his licensed warehouse in excess of the capacity thereof determined in accordance with § 105.13 (a), such warehouseman shall so arrange the broomcorn as not to obstruct free access thereto and the proper use of sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the Chief of the Bureau of such excess storage and arrangement thereof.*† [Reg. 5, sec. 19]

105.43 Removal of broomcorn from storage. Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any broomcorn, for storage, from the licensed warehouse or a part thereof designated in the receipt for such broomcorn unless such receipt is first surrendered and canceled. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall broomcorn be removed from the licensed warehouse, before the surrender of the receipts, and immediately upon any such removal the warehouseman shall notify the

Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 20]

105.44 State law; contracts; compliance. Each warehouseman shall faithfully perform his obligations as a warehouseman under the laws of the State in which he is conducting his warehouse and such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of broomcorn in such warehouse.*† [Reg. 5, sec. 21]

105.45 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 22]

105.46 Copies of certificates to be filed with warehouseman. When an inspection, grade, or weight certificate is issued by a licensed inspector, grader, or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the broomcorn covered by such certificate is stored, and such certificate shall become a part of the records of the licensed warehouseman.*† [Reg. 5, sec. 23]

FEES

105.47 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to a sampler, grader, weigher or an inspector.* [Reg. 6, sec. 1, SRA, BAE 84, as amended June 29, 1931]

105.48 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of \$5 for each 1,000 bales of the storage capacity, or fraction thereof, determined in accordance with § 105.13 (a), but in no case less than \$10 nor more than \$200, and, for each re-examination or reinspection applied for by such warehouseman, a fee, based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.* [Reg. 6, sec. 2, SRA, BAE 84, as amended June 29, 1931]

105.49 Advance deposit. Before any warehouseman's license or amendment thereto, or any sampler's, grader's, weigher's, or inspector's license, is granted, or an original examination or inspection, or re-examination or reinspection, applied for by a warehouseman, is made, pursuant to the regulations in this part, the warehouseman, and/or sampler, grader, weigher, or inspector, shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."* [Reg. 6, sec. 3, SRA, BAE 84, as amended June 29, 1931]

*†For statutory and source citations, see note to § 105.1.

105.50 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 105.49 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS, LICENSED GRADERS, AND LICENSED WEIGHERS

105.51 Inspector's, grader's, and weigher's application. (a) Application for licenses to inspect, grade, or weigh broomcorn under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-first birthday; (2) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act in which broomcorn sought to be inspected, graded, and weighed under such license is or may be stored; (3) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose; (4) satisfactory evidence that he has had at least one year's experience in the kind of service for which license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient; (5) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him; and (6) such other information as the Chief of the Bureau may deem necessary, Provided, That when application for license to inspect or grade broomcorn is filed by a person who does not intend to inspect or grade broomcorn for any particular licensed warehouseman but who does intend to inspect or grade broomcorn stored or to be stored in a licensed warehouse and to issue inspection or grade certificates therefor, as provided by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such broomcorn, it shall not be necessary to furnish such statement as is required by (3) of this paragraph.

(c) The applicant shall at any time furnish such additional information as may be deemed necessary to a proper consideration of his application.

(d) A single application may be made by any person for a license to inspect, grade, and weigh, upon complying with the requirements of this section.*† [Reg. 7, sec. 1]

105.52 Examination of applicant. Each applicant for license as an inspector, grader, or weigher, and each licensed inspector, licensed grader, or licensed weigher, whenever requested by an authorized agent of the Department of Agriculture designated by the Chief of the Bureau for the purpose, shall submit to an examination or test to show his ability to inspect, grade, or weigh broomcorn, as the case may be, and each such applicant or licensee shall furnish the Bureau any information which it may request, at any time, in regard to his inspection, grading, or weighing of broomcorn.*† [Reg. 7, sec. 2]

105.53 Posting of license. Each licensed inspector and each licensed grader shall keep his license conspicuously posted in the office where all or most of the inspecting and grading is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office, or in such place as may be designated by the Bureau.*† [Reg. 7, sec. 3]

105.54 Duties of licensees. Each licensed inspector, licensed grader, or licensed weigher, according to the nature of his license, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, sample, inspect, grade, or weigh, and certificate the condition, grade, or weight of broomcorn stored or to be stored in a warehouse for which he holds a license, if such broomcorn be offered to him under such conditions as permit proper sampling, inspection, grading, or weighing. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No sample shall be drawn and no inspection, grade, or weight certificate shall be issued under the Act for broomcorn not stored or to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

105.55 Inspection certificate; form. Each inspection certificate issued under the Act by a licensed inspector shall be issued on the day the inspection was made, shall be in a form approved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Broomcorn Inspection Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the broomcorn is or is to be stored; (d) the date of the certificate; (e) the location of the broomcorn at the time of inspection; (f) the identification number or mark on each bale of broomcorn, given in accordance with § 105.32; (g) the condition of the broomcorn for storage at the time of inspection; (h) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder; (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the broomcorn; and (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 5]

*†For statutory and source citations, see note to § 105.1.

105.56 Grade certificate; form. Each grade certificate issued under the Act by a licensed grader shall be issued on the day the grading was performed, shall be in a form approved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Broomcorn Grade Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the broomcorn is or is to be stored; (d) the date of the certificate; (e) the location of the broomcorn at the time of grading; (f) the identification number or mark of each bale of broomcorn, given in accordance with § 105.32; (g) the grade or other class of each bale of broomcorn covered by the certificate, in accordance with §§ 105.66–105.70, as far as applicable, and the standard or description in accordance with which the grade is made; (h) the approximate amount of broomcorn covered by the certificate; (i) that the certificate is issued by a licensed grader under the United States Warehouse Act and regulations thereunder; and (j) the signature of the licensed grader. In addition, the grade certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

105.57 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be issued on the day the weighing was performed, shall be in a form approved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Broomcorn Weight Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the broomcorn is or is to be stored; (d) the date of the certificate; (e) the location of the broomcorn at the time of weighing; (f) the identification number or mark of each bale of broomcorn, given in accordance with § 105.32; (g) the weight of the broomcorn; (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 7]

105.58 Combined grade, weight, and inspection certificate. The condition, grade, and weight of any broomcorn ascertained by a licensed inspector, licensed grader, and a licensed weigher may be stated on a certificate meeting the combined requirements of §§ 105.55–105.57, if the form of such certificate shall have been approved for the purpose by the Chief of the Bureau.*† [Reg. 7, sec. 8]

105.59 Copies of certificates to be kept. Each licensed inspector, each licensed grader, and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the broomcorn covered by the certificate is stored.*† [Reg. 7, sec. 9]

105.60 Licensees to permit and assist in examination. Each licensed inspector, each licensed grader, and each licensed weigher shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine at any time his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the licensed warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 105.33, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector, such licensed grader, or such licensed weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 10]

105.61 Reports. Each licensed inspector, each licensed grader, and each licensed weigher shall, from time to time, when requested by the Chief of the Bureau, make reports, on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed inspector, licensed grader, or licensed weigher.*† [Reg. 7, sec. 11]

105.62 Licenses; suspension or revocation. Pending investigation the Secretary may whenever he deems necessary, suspend the license of an inspector, grader, or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector, grader, or weigher, the Secretary may, without hearing, suspend or cancel the license issued to such licensee. The Secretary may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a licensed inspector, licensed grader, or licensed weigher when such licensee (a) has ceased to perform services as such inspector, grader, or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such licensee. As soon as it shall come to the attention of a licensed warehouseman that either of the conditions mentioned under (a) or (b) exist, it shall be the duty of such warehouseman to notify in writing the Chief of the Bureau. Before the license of any inspector, grader, or weigher is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 105.75.*† [Reg. 7, sec. 12]

105.63 Suspended or revoked licenses; return; termination of license. (a) In case a license issued to an inspector, grader, or weigher is suspended, revoked, or canceled by the Secretary, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon and it shall be returned to the person to whom it was originally issued, and it shall be posted as prescribed in § 105.53.

*†For statutory and source citations, see note to § 105.1.

(b) Any license issued to an inspector, grader or weigher shall automatically, terminate as to any licensed warehouse whenever the license of each warehouse shall be revoked or canceled. Thereupon the license of such inspector, grader, or weigher shall be returned to the Secretary. In case such license shall apply to other warehouses the Secretary shall issue to him a new license, omitting the names of the warehouses covering which licenses have been so revoked or canceled. Such new licenses shall be posted as prescribed in § 105.53.*† [Reg. 7, sec. 13]

105.64 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to an inspector, grader, or weigher, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.*† [Reg. 7, sec. 14]

105.65 Unlicensed inspector; grader; weigher. No person shall in any way represent himself to be an inspector, grader, or weigher licensed under the Act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the Act to perform such duties.*† [Reg. 7, sec. 15]

BROOMCORN CLASSIFICATION

105.66 Statement of classification. Whenever the variety, grade, or condition of broomcorn is required to be or is stated for the purposes of the Act and the regulations in this part, it shall be stated in accordance with §§ 105.66–105.70.*† [Reg. 8, sec. 1]

105.67 Standards to be used. Until such time as official broomcorn standards of the United States are in effect, the variety, grade, and condition of broomcorn shall be stated as far as applicable, (a) in accordance with tentative standards of the United States, if any; (b) in accordance with the State standards, if any, established in the State in which the warehouse is located; (c) in the absence of any State standards, in accordance with the standards, if any, adopted by any broomcorn organization or by the broom or broomcorn trade generally in the locality in which the warehouse is located subject to the disapproval of the Chief of the Bureau; or (d) in the absence of any of the aforesaid standards, in accordance with any standards approved for the purpose by the Chief of the Bureau.*† [Reg. 8, sec. 2]

105.68 Statement of variety; grade; condition. Whenever the variety, grade, or condition of broomcorn is stated for the purposes of the Act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the broomcorn. In determining the variety, grade, or condition of a bale of broomcorn, the bale as a whole shall be considered rather than parts of it which do not materially affect the value of the entire bale.*† [Reg. 8, sec. 3]

105.69 Statement of grade. Whenever the grade of broomcorn is stated for the purposes of the Act and the regulations in this part, it shall be based upon a careful and thorough examination of the bale of broomcorn or a representative sample thereof. In case the broom-

corn in one part of a bale or sample is inferior to that in other parts of the bale or sample, the grade assigned to the broomcorn shall be an average considering the proportion that each part bears to the whole, and in case of a question as to which of two or more grades should be assigned to the broomcorn, the lowest grade in question shall be assigned.*† [Reg. 8, sec. 4]

105.70 Statement of condition. Whenever the condition of broomcorn is stated for the purposes of the Act and the regulations in this part, it shall be based upon a careful and thorough examination of the bale of broomcorn.*† [Reg. 8, sec. 5]

ARBITRATIONS

105.71 Broomcorn arbitrations. (a) In case a question arises as to whether the variety, grade, or condition of the broomcorn was correctly stated in a receipt, inspection certificate, grade certificate, or weight certificate issued under the Act and the regulations in this part, or as to whether a sample was properly drawn by a licensed inspector in accordance with the regulations in this part, the licensed warehouseman concerned or any person financially interested in the broomcorn involved may, after reasonable notice to the other interested party, submit the question to an arbitration committee for determination in accordance with this section.

(b) Such arbitration committee shall be composed of three or more disinterested persons who are competent to pass upon the questions involved. If there be a local trade organization such as a board of trade, chamber of commerce, exchange, or inspection department which provides such a committee under a rule or practice acceptable to the Chief of the Bureau for the purpose, such committee may determine the question. In the absence of such a committee, or if for any good reason not inconsistent with the Act and the regulations in this part such a committee is not acceptable to either of the parties interested, the complainant and the other party shall each name a member and the two members so named shall select a third member, who shall constitute the arbitration committee. Each member of any such committee shall at all times be subject for good cause to the disapproval of the Chief of the Bureau, and in case any member is so disapproved he shall not thereafter act on an arbitration committee under this section unless such disapproval be withdrawn.

(c) It shall be the duty of such parties to acquaint the arbitration committee with the exact nature of the question to be determined and all the necessary facts and to permit the committee to examine the receipt, certificate, sample, or broomcorn involved or any papers or records needed for the determination of the question. The committee shall make a written finding setting forth the question involved, the necessary facts, and its determination. Such findings, or a true copy thereof, shall be filed as a part of the records of the licensed warehouseman involved. It may dismiss the matter without determination upon the request of the complainant, or for noncompliance by the complainant with the law or the regulations in

*†For statutory and source citations, see note to § 105.1.

this part, or because it is without sufficient evidence to determine the question, in which case the decision shall be deemed to be against the complainant. Except as otherwise provided by law, its decision shall be final for the purposes of the Act and the regulations in this part, unless the Chief of the Bureau shall direct a review of the question. Any necessary and reasonable expense of such arbitration shall be borne by the losing party, unless the committee shall decide that such expense shall be prorated between the parties.

(d) If the decision of the arbitration committee be that the variety, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it and he shall substitute therefor one conforming to the decision of the committee. If the decision of the committee be that a sample was not properly drawn in accordance with the regulations in this part, it shall cease to be a sample for the purposes of the regulations in this part, and the licensed inspector, at the request of any of the parties to the arbitration, shall draw and substitute a new sample, complying with the regulations in this part with respect to such sample.*† [Reg. 9, sec. 1]

MISCELLANEOUS

105.72 Bonds required. Every person applying for a license, or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248), shall be subject to all portions of the regulations in this part, except § 105.5, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of broomcorn and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 105.12, 105.13, file with the Secretary a single bond meeting the requirements of the Act and regulations, in such form and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of broomcorn and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual and contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

105.73 Publications. Publications under the Act and the regulations in this part shall be made in service and regulatory announcements of the Bureau and such other media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 10, sec. 2]

105.74 Information of violations. Every person licensed under the Act shall immediately furnish the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

105.75 Procedure in hearings. For the purpose of a hearing under the Act or the regulations in this part, except § 105.71, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by an official of the Department of Agriculture designated by him for the purpose, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary or an official of the Department of Agriculture designated by him for the purpose. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or an official of the Department of Agriculture authorized by the Secretary. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department of Agriculture. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

105.76 No conflict of laws. Nothing in the regulations in this part shall be construed to conflict with, or to authorize any conflict with or in any way to impair or limit the effect or operation of, the laws of any State relating to warehouses, warehousemen, inspectors, graders, weighers, nor shall the regulations in this part be construed so as to limit the operation of any statute of the United States relating to warehouses, warehousemen, inspectors, graders, or weighers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States.*† [Reg. 10, sec. 5]

105.77 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 6]

*†For statutory and source citations, see note to § 105.1.

PART 106—DRY BEANS WAREHOUSES

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CROSS REFERENCE

Beans and peas (inspection and certification) : See Part 58.

DEFINITIONS

Section 106.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 106.1 to 106.83, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 106.1 to 106.83, inclusive, is Regulations for warehousemen storing dry beans, Department of Agriculture, July 1931. (SRA, BAE 130)

106.2 Terms defined. For the purposes of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **Beans.** Only dry edible beans used for human consumption.

(b) **The Act.** The United States Warehouse Act approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(c) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Designated representative.** The Chief of the Bureau of Agricultural Economics.

(f) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(g) **Department.** United States Department of Agriculture.

(h) **Bureau.** The Bureau of Agricultural Economics.

(i) **Regulations.** Rules and regulations made under the Act by the Secretary.

(j) **Warehouse.** Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which beans are or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which beans are or may be stored and for which a license has been issued under the Act.

(k) **Warehouseman.** Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing beans and holding a warehouse license.

(l) **License.** A license issued under the Act by the Secretary.

(m) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(n) **Licensed inspector.** A person licensed under the Act by the Secretary to sample, to inspect, and/or to grade, and to certificate the condition for storage and/or the grade of beans.

(o) **Licensed weigher.** A person licensed under the Act by the Secretary to weigh and to certificate the weight of beans stored or to be stored under the Act.

(p) **Receipt.** A warehouse receipt.

(q) **Dockage.** See "Pick."

(r) **Pick.** The term "pick" includes any material other than beans, together with undeveloped, shriveled, discolored, damaged, split, and small pieces of beans which are picked by hand or eliminated by mechanical means from the lot. The pick shall be calculated in terms of percentage based on the total weight of the beans including the material to be eliminated.*† [Reg. 1, sec. 2]

WAREHOUSE LICENSES

106.3 Application forms. Applications for licenses under sections 4 and 9 of the Act (46 Stat. 1463, 1464; 7 U.S.C. 244, 248) and for amendments thereto shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or his designated representative shall find to be necessary to the consideration of his application.*† [Reg. 2, sec. 1]

106.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of beans, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the intent of the Act for not issuing such license.*† [Reg. 2, sec. 2]

106.5 Net assets required. Any warehouseman conducting a warehouse licensed or for which application for license has been made under the Act shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 20 cents per hundredweight of the maximum number of hundredweight that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000, and need not be more than \$100,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 106.12 (b).*† [Reg. 2, sec. 3]

106.6 License shall be posted. Immediately upon receipt of his license or of any amendment thereto under the Act, the warehouse-

man shall post the same and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

106.7 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, or his designated representative, whenever he deems it necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, cancel a license issued to a warehouseman when such warehouseman is (a) bankrupt or insolvent, (b) has parted in whole or in part with his control over the licensed warehouse, (c) is in process of dissolution or has been dissolved, (d) has ceased to conduct such licensed warehouse, or (e) has in any other manner become non-existent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 106.80.*† [Reg. 2, sec. 5]

106.8 Return of suspended or revoked warehouse license. When a license issued to a warehouseman terminates, or is suspended, or revoked by the Secretary or his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 106.6.*† [Reg. 2, sec. 6]

106.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof or a new license may be issued under the same number.*† [Reg. 2, sec. 7]

106.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a

*†For statutory and source citations, see note to § 106.1.

receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

106.11 Time of filing. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 106.12, he shall file such a bond within a time, if any, specified by the Secretary, or his designated representative, said bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

106.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of 20 cents per hundredweight or fractional part thereof, of the maximum number of hundredweight that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for said warehouses such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 106.11–106.15.

(b) In case of a deficiency in net assets under § 106.5, there shall be added to the amount of the bond, fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

106.13 Amendment to license. If application is made under § 106.3 for an amendment to a license and no bond previously filed by the warehouseman under §§ 106.11–106.15 covers obligations arising during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

106.14 New bond required each year. Whenever a license has been issued for a period longer than one year, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with,

and such bond shall have been approved by, the Secretary, or by his designated representative, prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 106.13.*† [Reg. 3, sec. 4]

106.15 Approval of bond. No bond, amendment or continuation thereof shall be deemed accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary, or by his designated representative.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

106.16 Form. (a) Every receipt, whether negotiable or non-negotiable, issued for beans stored in a warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse, (2) the license number of the warehouse, (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (4) in the event the relationship between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (5) the tag number given to each lot of beans in accordance with § 106.33, (6) a statement conspicuously placed, whether or not the beans are insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado, (7) a blank space designated for the purpose in which the condition of the beans shall be stated, (8) a blank space designated for the purpose in which the variety of the beans shall be stated, (9) the net weight, including dockage or pick, if any, (10) the words "Negotiable", or "Nonnegotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon, and (11) a statement indicating the amount of shrinkage and/or pickage agreed upon between the depositor and the warehouseman, in the case of nonidentity-preserved beans.

(b) Every receipt, whether negotiable or nonnegotiable, issued for beans stored in a warehouse shall specify a period, not exceeding one year, for which the beans are accepted for storage under the Act and the regulations in this part, but, upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of beans in the warehouse shall issue a new receipt for a further specified period not exceeding one year, provided it is first actually determined by a licensed inspector that the beans have not deteriorated and are in proper condition for further storage.

(c) The grade stated in a receipt issued for beans the identity of which is not to be preserved, shall be stated as determined by the licensed grader who last graded the beans before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) that the beans covered by the receipt were inspected and graded by a licensed inspector, and (2) a form of in-

*†For statutory and source citations, see note to § 106.1.

dorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the beans covered by the receipt.

(d) Whenever the grade or other class of beans is stated in a receipt issued for beans stored in a warehouse, such grade or other class shall be stated in the receipt in accordance with §§ 106.73–106.75.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words “Not graded on request of depositor.”

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.*† [Reg. 4, sec. 1]

106.17 Copies of receipts. If copies are made of receipts, all such copies, except those issued in lieu of the original in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the words “Copy—Not Negotiable.” If copies are not made then skeleton copies bearing the same numbers as the corresponding original receipts shall be made, but such skeleton copies need not be marked “Copy—Not Negotiable.”*† [Reg. 4, sec. 2]

106.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt, the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success and (2) a bond in an amount double the value, at the time the bond is given, of the beans represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 3]

106.19 Approval of form of receipt. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Chief of the Bureau, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

106.20 Partial delivery of beans. If a warehouseman deliver a part only of a lot of beans for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the beans. The new receipt shall show the date of issuance and also indicate the number and date of the old receipt.*† [Reg. 4, sec. 5]

106.21 Return of receipts before delivery of beans. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver beans for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver beans for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.*† [Reg. 4, sec. 6]

106.22 Nonnegotiable receipts; releases. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of beans covered by such receipt, together with a bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of beans covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 7]

106.23 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly, or indirectly, by any means whatsoever, compel or attempt to compel the depositor of any beans stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 8]

DUTIES OF LICENSED WAREHOUSEMAN

106.24 Beans must be inspected. No warehouseman shall accept beans for storage or any other purpose until they have been inspected and approved by a licensed inspector, nor store beans the identity of which is not to be preserved until their grade has been determined by a licensed inspector.*† [Reg. 5, sec. 1]

106.25 Insurance; requirements. (a) Each warehouseman, when so requested in writing by the depositor of, or the lawful holder of, the receipt for any beans, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such beans while in his custody insured in his own name, or

*†For statutory and source citations, see note to § 106.1.

arrange for their insurance otherwise, to the extent so requested, against loss or damage by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipt shall show that the beans are not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies, authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all beans.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 106.6, and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice stating briefly the conditions under which beans will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 2]

106.26 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

106.27 Shrinkage of beans. When beans are received for storage, the warehouseman and the depositor shall agree upon an amount to be allowed for natural shrinkage and loss caused by rodents while the beans are in storage, and the amount so agreed upon shall be clearly stated in the warehouse receipt.*† [Reg. 5, sec. 4]

106.28 Care of beans in storage. Each warehouseman shall at all times exercise such care in regard to beans in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.*† [Reg. 5, sec. 5]

106.29 Care of nonlicensed beans or other commodities. If at any time a warehouseman shall handle beans other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to them as not to endanger the beans in his custody as a warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision that said commodities are accepted for storage only until such time

as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value, or the insurance on beans covered by licensed receipts.*† [Reg. 5, sec. 6]

106.30 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety, approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehousemen in numerical order as soon as possible after their cancelation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 7]

106.31 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the Act, the warehouseman shall file with the Bureau a dated copy of his rules and schedule of charges to be made by him if licensed. Before making any change in such rules or schedules of charges he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 106.6, and at such other places, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 8]

106.32 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving beans for storage and delivering beans out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such office or warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) If the warehouse is not to be kept open as above required, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.*† [Reg. 5, sec. 9]

106.33 Tagging identity-preserved beans. Each warehouseman shall, upon acceptance for storage of any lot of sacked beans or of bulk beans to be specially binned, attach to such lot or bin an identification tag of good quality, or stencil a sufficient number of sacks in the lot in such manner as will readily make possible the identifica-

*†For statutory and source citations, see note to § 106.1.

tion of the lot at all times. Such tags shall show the lot number, the number of the receipt issued to cover such beans, the number of sacks in the lot, the variety or type of the beans, their grade, if determined, their net weight when they entered storage, and the date they entered storage.*† [Reg. 5, sec. 10]

106.34 Arrangement and tagging of stored beans. Each warehouseman shall so store each lot of beans for which a receipt under the Act has been issued that the tag or stencil identification marks thereon, required in § 106.33, are visible and readily accessible, and shall arrange all bags in his warehouse so as to permit making a determination of the number of bags in storage at any time.*† [Reg. 5, sec. 11]

106.35 Nonidentity-preserved beans; grading; weighing. All beans the identity of which is not to be preserved or has not been preserved shall be accepted for and delivered out of storage only on the basis of grades and weights determined by licensed inspectors and weighers.*† [Reg. 5, sec. 12]

106.36 Delivery of beans from storage. Except as may be provided by law or the regulations in this part, each warehouseman, (a) upon proper presentation of a receipt for any beans, other than bulk beans specially binned, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt, beans of the grade and quantity specified in such receipt, after making due allowance for such shrinkage as the receipt stipulates, and (b) upon proper presentation of a receipt for any beans the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges shall deliver to the person lawfully entitled thereto the identical beans stored in his warehouse.*† [Reg. 5, sec. 13]

106.37 System of accounts. Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, or his authorized representative, which shall show for each bag or lot of beans the name of the depositor, the weight of the beans, the number of bags in each lot, the grade when grade is required to be, or is, ascertained, the location in the warehouse, the dates received for and delivered out of storage, the receipts issued and canceled, and a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case of beans the identity of which is to be preserved the tag number or stencil identification mark mentioned in § 106.33 shall be shown.*† [Reg. 5, sec. 14]

106.38 Reports. Each warehouseman shall, from time to time, make such reports as the Bureau may require, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.*† [Reg. 5, sec. 15]

106.39 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period

as may be prescribed by the Bureau, an exact copy of each report submitted by such warehouseman under §§ 106.38, 106.53.*† [Reg. 5, sec. 16]

106.40 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to Washington or to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as the Bureau may designate of each canceled receipt numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 17]

106.41 Inspection and examination of warehouses. Each warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 18]

106.42 Weighing apparatus; inspection. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate shall be subject to examination by an officer or agent of the Department employed for such purpose. If the Bureau shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any beans for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 19]

106.43 Warehouse to be kept clean. Each warehouseman shall keep his warehouse clean and free from trash, excessive dirt, rubbish, and scattered beans. He shall also exercise every precaution to keep his warehouse free of rats or other pests that might cause damage or injury to beans in storage. The warehouseman shall not under any circumstances accept for storage in his warehouse beans showing the presence of weevil or the larvae of weevil, nor continue to keep in storage beans so affected, without treating them in such manner as will destroy such weevil and larvae or with such chemicals as may be approved by the Bureau for that purpose.*† [Reg. 5, sec. 20]

106.44 Fumigation of warehouse. When necessary, in the opinion of the Chief of the Bureau or his representative, the warehouseman shall fumigate thoroughly his warehouse with chemicals approved by the Bureau.*† [Reg. 5, sec. 21]

106.45 Damp, dirty, frosted beans; no storage. A warehouseman shall not, under any circumstances, accept for storage any beans with moisture content in excess of 17 percent, that contain foreign material likely to injure the keeping qualities of the beans or adversely affect their commercial value, or that are otherwise of a condition rendering them unsuitable for storage, but he may accept such beans for conditioning purposes and for storage after conditioning.*† [Reg. 5, sec. 22]

*†For statutory and source citations, see note to § 106.1.

106.46 Care in storage of beans. A warehouseman shall so handle and so store beans as not to injure or damage them in any manner.*† [Reg. 5, sec. 23]

106.47 Reconditioning deteriorated beans. If the warehouseman considers that any beans in his warehouse are out of condition, or becoming so, he shall direct the licensed inspector to examine the beans in question, and, if such inspector finds such beans to be out of condition or becoming so, and he is of opinion that such beans can be brought back into condition by mechanical or other means, or that further deterioration can be prevented, the warehouseman shall give immediate notice of the facts to the persons and in the manner specified in § 106.48 (b), (c). If, within 24 hours after the giving of such notice, the owners of such beans have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the licensed inspector, shall subject the beans to the proper reconditioning process in his licensed warehouse to the extent to which it is equipped with machinery suitable for the purpose, otherwise in any other warehouse so equipped.*† [Reg. 5, sec. 24]

106.48 Procedure in handling deteriorated beans. (a) If a warehouseman, with the approval of the licensed inspector, shall determine that any beans are deteriorating and that such deterioration cannot be stopped he shall give immediate notice thereof in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the beans are stored, (2) the quantity, kind, and grade of the beans at the time the notice is given, (3) the actual condition of the beans as nearly as can be ascertained, and the reason, if known, for such condition, and (4) the outstanding receipts covering the beans out of condition, giving the number and date of each such receipt, and the quantity, the kind, and grade of the beans as stated in each such receipt.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman, (2) to the person who originally deposited the beans, (3) to any other persons known by the licensed warehouseman to be interested in the beans, (4) to the Chief of the Bureau and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. If the holders of the receipts and the owners of the beans are known to the warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person, interested in any beans or the receipt covering such beans stored in a licensed warehouse, may, in writing, notify the warehouseman of his interest, and such warehouseman shall keep a record of that fact. If such person request in writing that he be notified regarding the condition of any such beans and agree to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) If the beans, advertised in accordance with the requirements of this section, have not been removed from storage by the owner

thereof within seven days from the date of notice of their being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner, after giving seven days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any beans after sending notification of their condition in accordance with this section.*† [Reg. 5, sec. 25]

106.49 Excess storage. If at any time a warehouseman shall be offered for storage in his warehouse beans in excess of the licensed capacity as shown on his license, he shall not accept such beans until he has first secured authority through an amended license, and after such authority has been granted, the warehouseman shall continue to so arrange the beans as not to obstruct free access thereto and the proper use of sprinklers or other fire protection equipment provided for such warehouse.*† [Reg. 5, sec. 26]

106.50 Removal of beans from storage. Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any beans from the warehouse or the part thereof designated in the receipt, unless such receipt is first surrendered and canceled. Under no circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall beans be removed from the warehouse before the surrender of receipts, and immediately upon any such removal the warehouseman shall notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 27]

106.51 Signatures of persons signing receipts. Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.*† [Reg. 5, sec. 28]

106.52 Signs of tenancy; posting. (a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee; (2) the name of the warehouse; (3) whether the warehouseman is owner or lessee; and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part as may be approved by the Chief of the Bureau.

*†For statutory and source citations, see note to § 106.1.

(d) Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

(e) No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.*† [Reg. 5, sec. 29]

106.53 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegram to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 30]

106.54 Copies of certificates to be filed with warehouseman. When an inspection or weight certificate has been issued by a licensed inspector or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the beans covered by such certificate are stored, and such certificate shall become a part of the records of the warehouseman.*† [Reg. 5, sec. 31]

FEES

106.55 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to an inspector or weigher.*† [Reg. 6, sec. 1]

106.56 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application by a warehouseman, a fee at the rate of \$1 for each 1,000 hundredweight of the storage capacity or fraction thereof, determined in accordance with § 106.12 (a) but in no case less than \$10 nor more than \$200, and, for each re-examination or reinspection applied for by such warehouseman, a fee based on the extent of the re-examination or reinspection, proportioned to, but not greater than that prescribed for the original examination or inspection.*† [Reg. 6, sec. 2]

106.57 Advance deposit. Before any warehouseman's license, or amendment thereto, is granted, or before a re-examination or reinspection applied for by a warehouseman is made, the warehouseman shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, or post-office or express money order, payable to the order of "Disbursing Clerk, Department of Agriculture."*† [Reg. 6, sec. 3]

106.58 Return of excess deposit. The disbursing clerk of the department shall hold in his custody each advance deposit made under § 106.57 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is

not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS AND WEIGHERS

106.59 Inspector's and weigher's application. (a) Applications for licenses to inspect and grade or to weigh beans under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-first birthday, (2) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which beans sought to be inspected and weighed under such license are or may be stored, (3) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (4) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient, (5) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him, and (6) such other information as the Bureau may deem necessary, Provided, That when an application for a license to inspect beans is filed by a person who does not intend to inspect for any particular licensed warehouseman but who does intend to inspect beans stored or to be stored in a licensed warehouse and to issue inspector's certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such beans, it shall not be necessary to furnish such statement as is required by (3) of this paragraph.

(c) The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to inspect and to weigh upon complying with all the requirements of this section.*† [Reg. 7, sec. 1]

106.60 Examination of applicant. Each applicant for a license as an inspector or as a weigher and each licensed inspector or licensed weigher shall, whenever requested by an authorized agent of the Department designated by the Chief of the Bureau for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.*† [Reg. 7, sec. 2]

*†For statutory and source citations, see note to § 106.1.

106.61 Posting of license. Each licensed inspector shall keep his license conspicuously posted in the office where all or most of the inspecting is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Bureau.*† [Reg. 7, sec. 3]

106.62 Duties of licensees. Each inspector and each weigher, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect or weigh and certificate the condition, grade, or weight for storage of beans stored or to be stored in a licensed warehouse, if such beans be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection or weight certificate shall be issued under the Act for beans not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

106.63 Inspection certificate; form. Each inspection certificate issued under the Act by a licensed inspector shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (a) the caption, "United States Warehouse Act, Bean Inspection Certificate", (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the beans are or are to be stored, (d) the date of the certificate, (e) the location of the beans at the time of inspection, (f) the identification number or mark of each lot of beans the identity of which is or is to be preserved, given in accordance with § 106.33, (g) the grade, dockage, or pick and condition of the beans for storage at the time of inspection, (h) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder, (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the beans, and (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 5]

106.64 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Bean Weight Certificate", (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the beans are to be stored, (d) the date of the certificate, (e) the location of the beans at the time of weighing, (f) the identification number or mark of each lot of beans, the identity of which is or is to be preserved, given in accordance with § 106.33, (g) the net weight of the beans, (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder, and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the

Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

106.65 Combined inspection and weight certificate. The weight, grade, and condition of any beans ascertained by a licensed inspector or a licensed weigher may be stated on a certificate meeting the combined requirements of §§ 106.63, 106.64, if the form of such certificate shall have been approved for the purpose by the Bureau.*† [Reg. 7, sec. 7]

106.66 Copies of certificates to be kept. Each licensed inspector and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested in the beans a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the beans covered by the certificate are stored.*† [Reg. 7, sec. 8]

106.67 Licensees to permit and assist in examination. Each licensed inspector and each licensed weigher shall permit any officer or agent of the Department, authorized by the Secretary or his designated representative for the purpose, to inspect or examine at any time, his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 106.37, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector or licensed weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 9]

106.68 Reports. Each licensed inspector and each licensed weigher shall, from time to time, when requested by the Bureau, make reports on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed inspector or licensed weigher.*† [Reg. 7, sec. 10]

106.69 Licenses; suspension or revocation. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or of a weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector or weigher, or when the inspector or weigher has ceased to perform such services at the warehouse, the Secretary, or his designated representatives, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such inspector or weigher has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector or licensed weigher. As soon as it shall come to the attention of a warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify in writing the Bureau. Before the license of any inspector or weigher is suspended or revoked pursuant

*†For statutory and source citations, see note to § 106.1.

to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 106.80.*† [Reg. 7, sec. 11]

106.70 Suspended or revoked license; return; termination of license. (a) If a license issued to an inspector or to a weigher is suspended or revoked, by the Secretary, or by his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of a license unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector or weigher to whom it was originally issued, and it shall be posted as prescribed in § 106.61.

(b) Any license issued to an inspector or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be suspended or revoked. Thereupon the license of such inspector or weigher shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended or revoked, the Secretary, or his designated representative, shall issue a new license to the inspector or weigher, omitting the names of the warehouses for which licenses have been so suspended or revoked. Such new licenses shall be posted as prescribed in § 106.61.*† [Reg. 7, sec. 12]

106.71 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to an inspector or a weigher, a duplicate thereof or a new license may be issued under the same or a new number.*† [Reg. 7, sec. 13]

106.72 Unlicensed inspector or weigher; misrepresentation. No person shall in any way represent himself to be an inspector or weigher licensed under the Act unless he holds an unsuspended and unrevoked license issued under the Act.*† [Reg. 7, sec. 14]

BEAN INSPECTION AND CLASSIFICATION

106.73 Statement of classification. Whenever the variety, grade, or condition of beans is required to be or is stated for the purposes of the Act and the regulations in this part, it shall be stated in accordance with §§ 106.74–106.75.*† [Reg. 8, sec. 1]

106.74 Standards to be used. Until such time as official bean grades of the United States are in effect, the variety, grade, and condition of beans shall be stated as far as applicable (a) in accordance with the State standards, if any, established in the State in which the warehouse is located, (b) in the absence of any State standards, in accordance with the standards, if any, adopted by any bean organization or by the bean trade, generally in the locality in which the warehouse is located, subject to the disapproval of the Chief of the Bureau, or (c) in the absence of the aforesaid standards in accordance with any standards approved by the Chief of the Bureau.*† [Reg. 8, sec. 2]

106.75 Statement of variety, grade, condition. Whenever the variety, grade or condition of beans is stated for the purposes of this Act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the beans. In case of doubt as to the variety, grade, or condition of a given lot of beans, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of beans offered for storage. These samples shall be thoroughly mixed, and after being so mixed, from this mixture by quartering a sufficient quantity shall be taken which shall constitute the sample for the purpose of determining the grade.*† [Reg. 8, sec. 3]

APPEAL OF GRADES

106.76 Conditions and procedure of appeal. (a) If a question arises as to whether the variety, grade, or condition of the beans was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the beans involved may, after reasonable notice to the other party, submit the question to such representatives of the Bureau as the Chief of Bureau may appoint. The decision of the representatives of the Bureau shall be final, unless the Chief shall direct a review of the question. Immediately upon making their decision, the representatives of the Bureau shall issue a certificate embodying their findings to the appellants and the licensee or licensees involved.

(b) If the decision of the representatives of the Bureau be that the variety, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of variety, grade, or condition in accordance with the findings of the representatives of the Bureau.

(c) All necessary and reasonable expense of such arbitration shall be borne by the losing party, unless the Chief of Bureau or his representative shall decide that the expense should be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

106.77 Bonds required. Every person applying for a license, or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part except § 106.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person, applying for a license under section 9 of the Act, to accept the custody of beans and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 106.11, 106.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance

*†For statutory and source citations, see note to § 106.1.

of the custody of beans and their storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, or amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

106.78 Publications. Publications under the Act and the regulations in this part shall be made in such media as the Chief of the Bureau may from time to time designate.*† [Reg. 10, sec. 2]

106.79 Information of violations. Every person licensed under the Act shall immediately furnish the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

106.80 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except § 106.76, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before and at a time and place fixed by the Secretary or his designated representative. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or his designated representative. Every written entry in the records of the Department made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

106.81 One document and one license to cover several products. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report, or other paper,

document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.*† [Reg. 10, sec. 5]

106.82 Bond for combination warehouse. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.*† [Reg. 10, sec. 6]

106.83 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 7]

PART 107—NUTS WAREHOUSES

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*†For statutory and source citations, see note to § 106.1.

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DEFINITIONS

Section 107.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 107.1 to 107.85, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 107.1 to 107.85, inclusive, (except for the amendment noted in the text,) is Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as amended, Aug. 1937. (SRA, BAE 119)

107.2 Terms defined. For the purposes of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **Nuts.** Unshelled, American-grown peanuts, pecans, filberts, and English or Persian walnuts.

(b) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(c) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(f) **Regulations.** Rules and regulations made under the Act by the Secretary.

(g) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(h) **Warehouse.** Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which nuts are or may be stored for interstate or foreign commerce, or, if located in any place under the exclusive jurisdiction of

the United States, in which nuts are or may be stored, and for which a license has been issued under the Act.

(i) Warehouseman. Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing nuts and holding a warehouse license.

(j) License. A license issued under the Act by the Secretary.

(k) Licensed warehouseman's bond. A bond required to be given under the Act by a licensed warehouseman.

(l) Licensed grader. A person licensed under the Act by the Secretary to grade and to certificate the grade or other class of nuts stored or to be stored in a licensed warehouse.

(m) Licensed weigher. A person licensed under the Act by the Secretary to weigh and certificate the weight of nuts stored or to be stored in a licensed warehouse.

(n) Licensed inspector. A person licensed under the Act by the Secretary to sample, to inspect, and to certificate the condition for storage of nuts.

(o) Receipt. A licensed warehouse receipt issued under the Act, unless otherwise specified.

(p) Package. A bag, sack, box, or other container.*† [Reg. 1, sec. 2]

WAREHOUSE LICENSE

107.3 Application form. Applications for licenses under sections 4 and 9 of the Act (46 Stat. 1463, 1464; 7 U.S.C. 244, 248) and for modifications or extensions of licenses under section 5 of the Act (42 Stat. 1282; 7 U.S.C. 245) shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application by the Secretary.*† [Reg. 2, sec. 1]

107.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary that the warehouse is not suitable for the proper storage of nuts, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.*† [Reg. 2, sec. 2]

107.5 Net assets required. The warehousemen conducting a warehouse licensed or for which application for license has been made under the Act shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$5 per ton of the maximum number of tons of peanuts, 2 cents per pound of the maximum number of pounds of walnuts or filberts, and/or 3 cents per pound of the maximum number of pounds of pecans that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less

*†For statutory and source citations, see note to § 107.1.

than \$5,000, and need not be more than \$100,000. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 107.12 (b).^{*†} [Reg. 2, sec. 3]

107.6 License shall be posted. Immediately upon receipt of his license or of any modification or extension thereof under the Act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.^{*†} [Reg. 2, sec. 4]

107.7 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a warehouseman when such warehouseman is (a) bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is suspended, revoked, or canceled for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 107.83.^{*†} [Reg. 2, sec. 5]

107.8 Return of suspended or revoked warehouse license. When a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed there-

on, and it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as required in § 107.6: Provided, That in the discretion of the Chief of the Bureau a new license may be issued without reference to such suspension.*† [Reg. 2, sec. 6]

107.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same or a new number at the discretion of the Secretary.*† [Reg. 2, sec. 7]

107.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

107.11 Time of filing. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 107.12, he shall file such bond within a time, if any, specified by the Secretary, such bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

107.12 Basis of amount of bond; additional amount. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of \$5 per ton of the maximum number of tons of peanuts, 2 cents per pound of the maximum number of pounds of walnuts or filberts, and/or 3 cents per pound of the maximum number of pounds of pecans that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 107.11–107.15. The amount of any bond covering more than one warehouse shall be determined on the same basis as for a single warehouse, but with the maximum amount raised to \$100,000.

(b) In case of a deficiency in net assets under § 107.5, there shall be added to the amount of the bond, fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) In case the Secretary finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

*†For statutory and source citations, see note to § 107.1.

107.13 Extension bond. If application is made under § 107.3 for a modification or an extension of a license, and no bond previously filed by the warehouseman under §§ 107.11–107.15 covers obligations arising during the period of such modification or extension, the warehouseman shall, when notice has been given by the Secretary or his representative, that his application for such modification or extension will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

107.14 New bond required each year. Whenever a continuous form of license has been issued, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 107.13.*† [Reg. 3, sec. 4]

107.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purpose of the Act and the regulations in this part until it has been approved by the Secretary.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

107.16 Form. (a) Every receipt, whether negotiable or nonnegotiable, issued for nuts stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws; (4) the tag number given to each package or lot of nuts in accordance with § 107.34; (5) a statement, conspicuously placed, whether or not the nuts are insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or flood; (6) a blank space designated for the purpose in which the condition of the nuts shall be stated; (7) a blank space designated for the purpose in which the variety and kind of nuts shall be stated; (8) the words “Not negotiable” or “Negotiable”, according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; and (9) a statement indicating the amount of shrinkage, if any, agreed upon between the depositor and the warehouseman.

(b) Every receipt, whether negotiable or nonnegotiable, issued for peanuts stored in a licensed warehouse shall specify a period, for which the peanuts are accepted for storage under the Act and the regulations in this part, not to extend beyond July 1 following the

year in which harvested. Upon demand and the surrender of the old receipt by the lawful holder thereof on July 1, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of peanuts in the warehouse, if he then continues to act as a licensed warehouseman, may issue a new receipt for a further specified period not to extend beyond March 31 of the year following the date of surrender of the receipt; Provided, That the peanuts are first reinspected by a licensed inspector and found to be in proper condition for further storage and the grade and condition as determined by the licensed inspector and the year in which the peanuts were harvested are shown on the new receipt.

(c) Every receipt, whether negotiable or nonnegotiable, issued for walnuts, filberts, or pecans stored in a licensed warehouse under ordinary dry storage conditions shall specify a period for which the walnuts, filberts, or pecans are accepted for storage under the Act and the regulations in this part not to extend beyond March 31 following the year in which harvested. Upon demand by the lawful holder and surrender of this receipt on or before March 31, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of walnuts, filberts, or pecans in his warehouse, if he then continues to act as a licensed warehouseman may issue a new receipt for a further specified period not to extend beyond December 31 of the year following the date of surrender of the receipt; Provided, That the walnuts, filberts, or pecans are first reinspected by a licensed inspector and found to be in proper condition for further storage and the grade and condition as determined by the licensed inspector and the year in which the walnuts, filberts, or pecans were harvested are shown on the new receipt; And provided further That such nuts are placed in licensed cold storage space before or immediately following inspection thereof and before the issuance of receipts.

(d) The grade stated in a receipt issued for nuts, shall be stated in such receipt in accordance with §§ 107.75–107.78, as determined by the licensed grader who last graded the nuts before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) That the nuts covered by the receipt were graded by a licensed grader, weighed by a licensed weigher, and inspected by a licensed inspector; (2) a form of indorsement which may be used by the depositor or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the nuts covered by the receipt.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.*† [Reg. 4, sec. 1]

*†For statutory and source citations, see note to § 107.1.

107.17 Copies of receipts. If any copies of receipts are made, all such copies, except those issued in lieu of the original in case of lost or destroyed receipts, shall, if there be no statute of the United States or law of a State providing otherwise, have clearly and conspicuously printed or stamped thereon the words, "Copy—Not Negotiable."*† [Reg. 4, sec. 2]

107.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the licensed warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the nuts represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, to the extent of the amount of bond.*† [Reg. 4, sec. 3]

107.19 Approval of form of receipts. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Chief of the Bureau; (b) upon distinctive paper specified by him; (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing; and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

107.20 Partial delivery of nuts. If a warehouseman deliver a part only of a lot of nuts for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt bearing the same lot number for the undelivered portion of the nuts. In addition to showing the information required by § 107.16, the new receipt shall also indicate the date and number of the receipt which it supersedes.*† [Reg. 4, sec. 5]

107.21 Return of receipts before delivery of nuts. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver nuts for which he has issued a negotiable receipt

until the receipt has been returned to him and canceled; and shall not deliver nuts for which he has issued a nonnegotiable receipt until such receipt has been returned to him, or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.*† [Reg. 4, sec. 6]

107.22 Authority for delivery of nuts on nonnegotiable receipts. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of nuts covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of nuts covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine; Provided That if the holder of such nonnegotiable receipts agrees in writing to hold blameless both the warehouseman and bondsman for any loss that might result from improper delivery through receipt of an unauthorized telegram, deliveries may be made on receipt of telegraphic orders to be followed immediately with usual confirmation order.*† [Reg. 4, sec. 7]

107.23 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly or indirectly, by any means whatever, compel or attempt to compel the depositor of any nuts, stored in his licensed warehouse, to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 8]

DUTIES OF LICENSED WAREHOUSEMAN

107.24 Nuts must be inspected. No warehouseman shall accept nuts for storage until they have been inspected and approved by a licensed inspector.*† [Reg. 5, sec. 1]

107.25 Insurance requirements. (a) Each licensed warehouseman, when so requested in writing as to any nuts by the depositor thereof or lawful holder of the receipt covering such nuts, shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such nuts while in his custody as a licensed warehouseman insured in his own name or arrange for insurance otherwise to the extent so requested against loss or damage by fire, lightning, tornado, or flood. When insurance is not carried in the warehouseman's name the receipts shall show that the nuts are not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all nuts stored in his warehouse.

*†For statutory and source citations, see note to § 107.1.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 107.6, and at such other place as the Chief of the Bureau or his representative may from time to time designate a notice stating briefly the conditions under which the nuts will be insured against loss or damage by fire, lightning, tornado, or flood.*† [Reg. 5, sec. 2.]

107.26 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

107.27 Insurance; collection; payment. Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 4]

107.28 Agreement regarding shrinkage. At the time nuts are received for storage the warehouseman and the depositor shall agree upon an amount to be allowed for shrinkage while the products are in storage, such shrinkage to include loss caused by natural drying out of the nuts, if any, and by rodents, but in no event shall the total amount of shrinkage exceed 5 percent of the weight of the nuts at the time they entered storage.*† [Reg. 5, sec. 5]

107.29 Care of nuts in warehouses. Each warehouseman shall at all times exercise such care in regard to nuts in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. Walnuts, filberts, and/or pecans stored under licensed receipts between March 31 and December 31, of the year following the year in which such walnuts, filberts, and/or pecans were harvested must be stored in a licensed cold-storage warehouse or room. The warehouseman shall maintain an even temperature in such licensed space, which temperature shall not exceed 34° F. nor be less than 32° F. at any time while the walnuts, filberts, and/or pecans are in storage. Such licensed cold-storage warehouse or room shall be equipped with automatic recording thermometers, approved by the Chief of the Bureau or his representative, and continuous temperature records or charts shall be kept by the warehouseman.*† [Reg. 5, sec. 6]

107.30 Care of nonlicensed nuts, or other commodities. If at any time a warehouseman shall handle nuts other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to them as not to endanger the nuts in his custody as a licensed warehouseman, or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the warehouseman

shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of or impair the insurance on nuts covered by licensed receipts.*† [Reg. 5, sec. 7]

107.31 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancellation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 8]

107.32 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for service rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the Bureau a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges, he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 107.6, and at such other places, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 9]

107.33 Business hours. (a) Each licensed warehouse shall be kept open for the purpose of receiving nuts for storage and delivering nuts out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section, Provided, That nothing contained in §§ 107.24–107.55 shall be construed to give authority for any warehouseman to accept walnuts, filberts, and/or pecans for storage except as indicated in § 107.16 (c). The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver nuts stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.*† [Reg. 5, sec. 10]

*†For statutory and source citations, see note to § 107.1.

107.34 Numbered tags to be attached to nuts. Each warehouseman shall, upon acceptance of any lot of nuts in packages for storage, immediately stencil or mark an identification number or mark on each such package in the lot and attach to such lot a tag of good quality which shall identify the lot. Such tag shall show the lot number, the identification mark on each package, the number of the receipt issued to cover such nuts, the number of sacks in the lot, the kind and variety of the nuts, the grade if determined, and the gross weight of the nuts at the time they entered storage.*† [Reg. 5, sec. 11]

107.35 Identification tag on stored nuts. Each warehouseman shall so store each lot of nuts for which a receipt under the Act has been issued that the tag thereon, required by § 107.34, is visible and readily accessible, and shall arrange all packages in his licensed warehouse so as to permit an accurate count thereof and to facilitate sampling of the nuts and inspection for condition.*† [Reg. 5, sec. 12]

107.36 Bulk nuts; grades and weights. Each licensed warehouseman shall accept all nuts for storage and shall deliver out of storage all bulk nuts, other than specially binned or sacked nuts, in accordance with the grade of such nuts as determined by a person duly licensed to grade such nuts and to certificate the grade thereof, and in accordance with the weights of such nuts as determined by a person duly licensed to weigh such nuts and to certificate the weight thereof, under the Act and the regulations in this part, and in accordance with the agreement regarding shrinkage as shown by the terms of the receipt.*† [Reg. 5, sec. 13]

107.37 Identity-preserved nuts; bulk storage. Upon the acceptance by a licensed warehouseman, for storage in his licensed warehouse, of any lot of bulk nuts the identity of which is to be preserved, he shall store, or cause to be stored, such nuts in an individual bin or compartment designated by lot or cargo numbers, or by letters, numbers or other clearly distinguishable words or signs, permanently and securely affixed thereto, or shall so mark the container or containers of such nuts, or so place the nuts in the warehouse, that their identity will not be lost during the storage period.*† [Reg. 5, sec. 14]

107.38 Delivery of bulk nuts. Except as may be provided by law or the regulations in this part, each licensed warehouseman, (a) upon proper presentation of a receipt for any bulk, other than specially binned nuts, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt nuts of the grade and quantity specified in such receipt, after making due allowance for such shrinkage as the receipt stipulates, and (b) upon proper presentation of a receipt for any nuts, the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical nuts stored in his licensed warehouse.*† [Reg. 5, sec. 15]

107.39 System of accounts. Each licensed warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, which shall show for each lot of nuts, the name of the depositor, the weight of the nuts, the number of packages in each lot, the grade when grade is required to be, or is, ascertained, the location, the dates received for and delivered out of storage and the receipts issued and canceled, a separate record for each depositor and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case of nuts stored in packages, the tag number mentioned in § 107.34 shall be shown.*† [Reg. 5, sec. 16]

107.40 Reports. Each licensed warehouseman shall, from time to time, when requested by the Chief of the Bureau, make such reports, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse, as the Chief of the Bureau may require.*† [Reg. 5, sec. 17]

107.41 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as the Bureau may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 18]

107.42 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Chief of the Bureau for each kind of report, an exact copy of each such report submitted by such warehouseman under §§ 107.40, 107.54.*† [Reg. 5, sec. 19]

107.43 Inspections; examinations of warehouses. Each licensed warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 20]

107.44 Weighing, testing, measuring apparatus; inspection. The apparatus used for determining the weight, quantity, or quality stated in a receipt or certificate shall be subject to examination by any officer or agent of the Department of Agriculture employed for such purpose. If the Bureau shall disapprove such apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight, quantity, or quality of nuts for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 21]

107.45 Warehouse to be kept clean. Each licensed warehouseman shall keep his warehouse clean and free from trash, dust, rubbish, and scattered nuts, and shall provide bins for the storage of

*†For statutory and source citations, see note to § 107.1.

nuts in bulk. He shall also exercise every precaution to keep his warehouse free of rats or insects that might cause damage or injury to nuts in storage.*† [Reg. 5, sec. 22]

107.46 Signs of tenancy. (a) Each licensed warehouseman shall, during the life of his license, maintain suitable signs on the licensed property in such a manner as will give ample notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of appropriate size and design and shall include the following: (1) The name of the licensee, (2) the license number of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "public warehouse".

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part, subject to the approval of the Bureau.

(d) Upon the expiration of his license, or during periods of suspension thereof, the warehouseman shall immediately remove such signs or portions thereof as may convey the impression that the warehouse is licensed.

(e) The warehouseman shall not permit any signs to remain on his licensed property which might lead to confusion as to the tenancy.*† [Reg. 5, sec. 23]

107.47 Excess storage. If at any time a warehouseman shall store nuts in his licensed warehouse in excess of the capacity thereof determined in accordance with § 107.12 (a), such warehouseman shall so arrange the nuts as not to obstruct free access thereto and the proper use of sprinkler or other fire-protection equipment provided for such warehouse, and shall immediately notify the Chief of the Bureau of such excess storage and arrangement thereof.*† [Reg. 5, sec. 24]

107.48 Removal of nuts from storage; conditions. Except as may be permitted by law or the regulations in this part, a licensed warehouseman shall not remove any nuts for storage from the licensed warehouse or the part thereof designated in the receipt for such nuts until such receipt is first surrendered and canceled. If it becomes absolutely necessary to remove the nuts prior to the surrender of the receipts in order to protect the interests of holders of the receipts, the warehouseman shall notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 25]

107.49 Wet nuts; no storage. A warehouseman shall not under any circumstances accept for storage any nuts in his licensed warehouse that are wet, improperly cured, or otherwise of a condition rendering them unsuitable for storage.*† [Reg. 5, sec. 26]

107.50 Storage to prevent damage. A warehouseman shall not handle or store nuts in such manner as will injure or damage them or in any part of the warehouse in which they are likely to be injured or damaged by excessive moisture or otherwise.*† [Reg. 5, sec. 27]

107.51 Deteriorating nuts; handling. (a) If the licensed warehouseman, with the approval of the licensed inspector, shall determine that any nuts are deteriorating and that such deterioration can

not be stopped, the licensed warehouseman shall give immediate notice of the fact, in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the nuts are stored; (2) the quantity, kind, and grade of the nuts at the time the notice is given; (3) the actual condition of the nuts as nearly as can be ascertained, and the reason, if known, for such condition; (4) the outstanding receipts covering the amount of nuts out of condition, giving the number and date of each such receipt and the quantity, the kind, and grade of the nuts as stated in each such receipt; and (5) that such nuts will be delivered upon the return and cancelation of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts, if known to the licensed warehouseman; (2) to the person who originally deposited the nuts; (3) to any other persons known by the licensed warehouseman to be interested in the nuts; and (4) to the Chief of the Bureau. If the holders of the receipts and the owners of the nuts are known to the licensed warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the licensed warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

Public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license.

(d) Any person, interested in any nuts or the receipt covering such nuts stored in a licensed warehouse, may, in writing, notify the licensed warehouseman, conducting such licensed warehouse, of the fact of his interest, and such licensed warehouseman shall keep a record of the fact. If such person request in writing that he be notified regarding the condition of any such nuts and agree to pay the cost of any telegraph or telephone toll charge, such licensed warehouseman shall notify such person in accordance with such request.

(e) Nothing contained in this section shall be construed as relieving the licensed warehouseman from properly caring for any nuts after notification of their condition in accordance with this section.*† [Reg. 5, sec. 28]

107.52 Sale at public auction. If the nuts, advertised in accordance with the requirements of § 107.51 have not been removed from storage by the owner thereof within 5 days from the date of notice of their being out of condition, the licensed warehouseman in whose licensed warehouse such nuts are stored may sell the same at public auction at the expense and for the account of the owner after giving 10 days' notice in the manner specified in § 107.51(c).*† [Reg. 5, sec. 29]

107.53 State laws, contracts; compliance. Each warehouseman shall faithfully perform his obligation as a warehouseman under the laws of the State in which he is conducting his licensed warehouse and such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of nuts in such warehouse.*† [Reg. 5, sec. 30]

*†For statutory and source citations, see note to § 107.1.

107.54 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 31]

107.55 Grade-weight certificate; filing. When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the nuts covered by such certificate are stored, and such certificate shall become a part of the records of the licensed warehouseman.*† [Reg. 5, sec. 32]

FEEES

107.56 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to a sampler, grader, weigher, or an inspector.* [Reg. 6, sec. 1, SRA, BAE 119, as amended June 29, 1931]

107.57 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of \$1 for each 100 tons of peanuts and/or \$4 for each 1,000 hundredweight of walnuts, filberts, or pecans of the storage capacity, or fraction thereof, determined in accordance with § 107.12 (a), but in no case less than \$10 nor more than \$200, and, for each re-examination or reinspection applied for by such warehouseman, a fee based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.* [Reg. 6, sec. 2, SRA, BAE 119, as amended June 29, 1931]

107.58 Advance deposit. Before any warehouseman's license or amendment thereto or any sampler's, grader's, weigher's, or inspector's license is granted, or an original examination or inspection, or re-examination or reinspection, applied for by a warehouseman, is made, pursuant to the regulations in this part, the warehouseman and/or sampler, grader, weigher, or inspector, shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "U. S. Department of Agriculture"* [Reg. 6, sec. 3 SRA, BAE 119, as amended June 29, 1931]

107.59 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 107.58 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such

advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED GRADERS, LICENSED WEAIGHERS, AND LICENSED INSPECTORS

107.60 Inspector's, weigher's, grader's application. (a) Application for licenses to grade, to weigh, or to inspect nuts under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-first birthday; (2) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act in which nuts sought to be graded, weighed, and inspected under such license are or may be stored; (3) a statement from the warehouseman conducting such warehouse showing whether or not the applicant is competent and is acceptable to such warehouseman for the purpose; (4) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient; (5) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him; and (6) such other information as the Chief of the Bureau may deem necessary, Provided, That when an application for a license to grade nuts is filed by a person who does not intend to grade nuts for any particular licensed warehouseman but who does intend to grade nuts stored or to be stored in a licensed warehouse and to issue grade certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such nuts, it shall not be necessary to furnish such statement as is required by (3) of this paragraph.

(c) The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application by the Secretary.

(d) A single application may be made by any person for a license to grade, to weigh, and to inspect upon complying with all the requirements of this section.*† [Reg. 7, sec. 1]

107.61 Examination of applicant. Each applicant for a license as a grader, a weigher, or an inspector and each licensed grader, licensed weigher, or licensed inspector shall, whenever requested by an authorized agent of the Department of Agriculture designated by the Chief of the Bureau for the purpose, submit to an examination or test to show his ability properly to perform the duties for which

*†For statutory and source citations, see note to § 107.1.

he is applying for license or for which he has been licensed.*† [Reg. 7, sec. 2]

107.62 Posting of license. Each grader shall keep his license conspicuously posted in the office where all or most of the grading is done, and each weigher or inspector shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Chief of the Bureau.*† [Reg. 7, sec. 3]

107.63 Duties of licensees. Each grader, each weigher, and each inspector when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms grade, weigh, or inspect and certificate the grade, weight, or condition for storage of nuts stored or to be stored in a licensed warehouse for which he holds a license, if such nuts be offered to him under such conditions as permit proper inspection and the determination of the grade, weight or condition thereof, as the case may be. Each such grader, weigher, or inspector shall give preference to persons who request his services as such over persons who request his services in any other capacity. No grade, weight, or inspection certificate shall be issued under the Act for nuts not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

107.64 Grade certificate; form. Each grade certificate issued under the Act by a licensed grader shall be in a form approved for the purpose by the Chief of the Bureau and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Nut Grade Certificate"; (b) whether it is an original, a duplicate or other copy; (c) the name and location of the warehouse in which the nuts are or are to be stored; (d) the date of the certificate; (e) the location of the nuts at the time of grading; (f) the identification number or mark of each package of nuts, if in packages, given in accordance with § 107.34; (g) the grade or other class of each package or lot of nuts covered by the certificate, in accordance with §§ 107.75–107.78 as far as applicable, and the standard or description in accordance with which the grade is made; (h) the approximate amount of nuts covered by the certificate; (i) that the certificate is issued by a licensed grader under the United States Warehouse Act and regulations thereunder; and (j) the signature of the licensed grader. In addition, the grade certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 5]

107.65 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Nut Weight Certificate"; (b) whether it is an original, a duplicate or other copy; (c) the name and location of the warehouse in which the nuts are or are to be stored; (d) the date of the certificate; (e) the location of the nuts at the time of weighing; (f) the identi-

fication number or mark of each package of nuts, if in packages, given in accordance with § 107.34; (g) the gross weight of the nuts; (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

107.66 Inspection certificate; form. Each inspection certificate issued under the Act by a licensed inspector shall be in a form approved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Nut Inspection Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the nuts are or are to be stored; (d) the date of the certificate; (e) the location of the nuts at the time of inspection; (f) the identification number or mark of each package of nuts, if in packages, given in accordance with § 107.34; (g) the condition of the nuts for storage at the time of inspection; (h) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder; (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the nuts; and (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 7]

107.67 Combination certificate; use. The grade, weight, and condition of any nuts, ascertained by a grader, a weigher, and an inspector may be stated on a certificate meeting the combined requirements of §§ 107.64–107.66, if the form of such certificate shall have been approved for the purpose by the Chief of the Bureau.*† [Reg. 7, sec. 8]

107.68 Copies of certificates to be kept. Each grader, each weigher, and each inspector shall keep for a period of one year in a place accessible to persons financially interested a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the nuts covered by the certificate are stored.*† [Reg. 7, sec. 9]

107.69 Licensees to permit and assist in examination. Each grader, each weigher, and each inspector shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 107.39, as far as any such inspection or examination relates to the performance of the duties of such grader, weigher, or inspector under the Act and the regulations in this part.*† [Reg. 7, sec. 10]

*†For statutory and source citations, see note to § 107.1.

107.70 Reports. Each grader, each weigher, and each inspector shall, from time to time, when requested by the Chief of the Bureau, make reports on forms furnished for the purpose by the Bureau, bearing upon his activities as such grader, weigher, or inspector.*† [Reg. 7, sec. 11]

107.71 Licenses; suspension; revocation. Pending investigation the Secretary may, whenever he deems necessary, suspend the license of a grader, weigher, or inspector temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the grader, weigher, or inspector, the Secretary may, without hearing, suspend or cancel the license issued to such grader, weigher, or inspector. The Secretary may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a grader, weigher, or inspector, when such grader, weigher, or inspector has in any manner become incompetent or incapacitated to perform the duties of a licensed grader, weigher, or inspector. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions mentioned in this section exist, it shall be the duty of such warehouseman to notify in writing the Chief of the Bureau. Before the license of any grader, weigher, or inspector is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such grader, weigher, or inspector shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 107.83.*† [Reg. 7, sec. 12]

107.72 Suspended or revoked license; return; termination of license. (a) In case a license issued to a grader, weigher, or inspector is suspended, revoked, or canceled by the Secretary, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed grader, licensed weigher, or licensed inspector to whom it was originally issued, and it shall be posted as prescribed in § 107.62, Provided, That in the discretion of the Chief of the Bureau a new license may be issued without reference to such suspension.

(b) Any license issued under the Act and the regulations in this part to a grader, weigher, or inspector shall automatically terminate as to any licensed warehouse whenever the license of such warehouse shall be revoked or canceled. Thereupon the license of such grader, weigher, or inspector shall be returned to the Secretary. In case such license shall apply to other warehouses the Secretary shall issue to him a new license, omitting the names of the warehouses covering which licenses have been so revoked or canceled. Such new licenses shall be posted as prescribed in § 107.62.*† [Reg. 7, sec. 13]

107.73 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to a licensed grader, licensed weigher, or licensed inspector, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.*† [Reg. 7, sec. 14]

107.74 Unlicensed graders, weighers, inspectors; misrepresentation. No person shall in any way represent himself to be a grader, weigher, or inspector, licensed under the Act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the Act.*† [Reg. 7, sec. 15]

NUT GRADING

107.75 Classification; statement. Whenever the variety, grade, or condition of nuts is required to be or is stated for the purposes of this act and the regulations in this part, it shall be stated in accordance with §§ 107.75–107.78.*† [Reg. 8, sec. 1]

107.76 Standards to be used. Until such time as official peanut, walnut, filbert and/or pecan grades of the United States are in effect, the variety, grade, and condition of nuts shall be stated as far as applicable (a) in accordance with the State standards, if any, established in the State in which the warehouse is located, (b) in the absence of any State standards, in accordance with the standards, if any, adopted by any peanut, walnut, filbert or pecan organization or by the peanut, walnut, filbert or pecan trade generally in the locality in which the warehouse is located, subject to the disapproval of the Chief of the Bureau, or (c) in the absence of the aforesaid standards in accordance with any standards approved by the Chief of the Bureau.*† [Reg. 8, sec. 2]

107.77 Peanuts; statement of variety, grade, condition. Whenever the variety, grade, or condition of the peanuts is stated for the purposes of this act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the peanuts. In case of doubt as to the variety, grade, or condition of a given lot of peanuts a determination shall be made of such facts by drawing at least 6 samples of 5 pounds each, fairly representative of the contents of the car or 2 samples of 2 pounds each fairly representative of the contents of the wagon from the various parts of the carload or wagonload of peanuts offered for storage. These samples shall be thoroughly mixed and after being so mixed, from this mixture by quartering, not less than 100 grams shall be taken, which, after being hand shelled (in the case of varieties used for shelling purposes exclusively) shall constitute the sample for the purpose of determining the grade.

In the classification of grading of Virginia-type peanuts, or peanuts which may be sold to the consuming trade in the shell, the same method of sampling shall be used, except that samples of one-half pound shall be taken from 10 percent of the sacks of peanuts from various parts of the lot offered for storage, and this sample shall constitute the sample for the purpose of determining the grade without shelling.*† [Reg. 8, sec. 3]

*†For statutory and source citations, see note to § 107.1.

107.78 Walnuts, filberts, pecans; same. Whenever the kind, grade, or other class or condition of walnuts, filberts, or pecans is stated for the purposes of this Act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the walnuts, filberts, or pecans. In case of doubt as to the kind, grade or condition of a given lot of walnuts, filberts, or pecans, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of walnuts, filberts, or pecans offered for storage, the method of drawing such samples and the adequacy of the samples to be determined by representatives of the Bureau.*† [Reg. 8, sec. 4]

APPEAL OF GRADES

107.79 Conditions and procedure of appeal. (a) If a question arises as to whether the kind, grade, or condition of nuts was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the nuts involved may, after reasonable notice to the other party, submit the question to the Chief of the Bureau, who may appoint a committee to make a determination. The decision of the committee shall be final, unless the Chief shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and to the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and be canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of kind, grade, or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Chief of the Bureau or his representative shall decide that the expense shall be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

107.80 Bond requirements. Every person applying for a license or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part, except § 107.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of nuts and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 107.11, 107.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount not less than \$5,000, as he shall prescribe, to insure the performance by such person with respect to the acceptance of the custody of nuts and their storage in the warehouses in such

system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

107.81 Publications. Publications under the Act and the regulations in this part, shall be made in service and regulatory announcements of the Bureau of Agricultural Economics, and such other media as the Chief of that Bureau may from time to time designate for the purposes.*† [Reg. 10, sec. 2]

107.82 Information of violations. Every person licensed under the Act shall immediately furnish the Chief of the Bureau any information which comes to the knowledge of such persons tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

107.83 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except § 107.79, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by an official of the Department of Agriculture designated by him for the purpose, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, on oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary or an official of the Department of Agriculture designated by him for the purpose. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or an official of the Department of Agriculture authorized by the Secretary. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department of Agriculture. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

*†For statutory and source citations, see note to § 107.1.

107.84 State-Federal laws; no conflict. Nothing in the regulations in this part shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, or inspectors, nor shall the regulations in this part be construed so as to limit the operation of any statute of the United States relating to warehouses, warehousemen, or inspectors now in force in the District of Columbia, or in any Territory or other place under the exclusive jurisdiction of the United States.*† [Reg. 10, sec. 5]

107.85 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 6]

PART 108—SIRUP WAREHOUSES

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DEFINITIONS

Section 108.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 108.1 to 108.74, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 108.1 to 108.74, inclusive, (except for the amendments noted in the text,) is Regulations of the Secretary of Agriculture for storing sirups under the United States Warehouse Act of August 11, 1916, as amended, Dec. 31, 1924. (SRA, BAE 89)

108.2 Terms defined. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) **Sirup.** Sugarcane sirup, maple sirup, or extracted honey, as defined in Circular 136, Office of the Secretary, United States Department of Agriculture.

(b) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(c) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(f) **Regulations.** Rules and regulations made under the Act by the Secretary.

(g) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(h) **Warehouse.** Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which sirup is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which sirup is or may be stored and for which a license has been issued under the Act.

(i) **Warehouseman.** Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing sirup and holding a warehouse license.

(j) **License.** A license issued under the Act by the Secretary.

(k) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(l) **Licensed inspector.** A person licensed under the Act by the Secretary to inspect, to sample, to grade, and to certificate the grade and condition for storage of sirup.

(m) **Receipt.** A warehouse receipt.* [Reg. 1, sec. 2, SRA, BAE 89, Dec. 2, 1924, as amended June 3, 1926]

WAREHOUSE LICENSES

108.3 Application forms. Applications for licenses and for modifications or extensions of licenses under the Act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application.*† [Reg. 2, sec. 1]

108.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary that the warehouse is not suitable for the proper storage of sirup, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.*† [Reg. 2, sec. 2]

108.5 Net assets required. The warehouseman conducting a warehouse licensed or for which application for license has been made under the Act shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least five (5) cents per gallon of sugarcane sirup and ten (10) cents per gallon of maple sirup or honey, of the maximum number of gallons that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000, and need not be more than \$100,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 108.12 (b).* [Reg. 2, sec. 3, SRA, BAE 89, as amended June 3, 1926]

108.6 License shall be posted. Immediately upon receipt of his license or of any modification or extension thereof under the Act, the

warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

108.7 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary may, without hearing suspend or cancel the license issued to such warehouseman. The secretary may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, cancel a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked or canceled for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 108.72.*† [Reg. 2, sec. 5]

108.8 Return of suspended or revoked warehouse licenses. When a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 108.6; Provided, That in the discretion of the Chief of the Bureau a new license may be issued without reference to the suspension.* [Reg. 2, sec. 6, SRA, BAE 89, as amended June 3, 1926]

108.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same or a new number at the discretion of the Secretary.*† [Reg. 2, sec. 7]

108.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either

*†For statutory and source citations, see note to § 108.1.

in a receipt or otherwise, unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

108.11 Time of filing. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 108.12, he shall file such bond within a time, if any, specified by the Secretary, such bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

108.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of five (5) cents per gallon of sugarcane sirup and ten (10) cents per gallon of maple sirup or honey, of the maximum number of gallons that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 108.11–108.15.

(b) In case of a deficiency in net assets under § 108.5, there shall be added to the amount of the bond fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.* [Reg. 3, sec. 2, SRA, BAE 89, Dec. 2, 1924, as amended June 3, 1926]

108.13 Amendment to license. If application is made under § 108.3, for a modification or an extension of a license, and no bond previously filed by the warehouseman under §§ 108.11–108.15 covers obligations arising during the period of such modification or extension, the warehouseman shall, when notice has been given by the Secretary or his representative, that his application for such modification or extension will be granted upon compliance by such warehouseman with the Act, filed with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

108.14 New bond required each year. Whenever a license has been issued for a period longer than one year, such license shall not

be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 108.13.*† [Reg. 3, sec. 4]

108.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

108.16 Form. (a) Every receipt, whether negotiable or nonnegotiable, issued for sirups stored in a warehouse, shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws; (4) in the case of identity-stored sirup, the lot number given to each lot of sirup, in accordance with § 108.31; (5) a statement conspicuously placed, whether or not the sirup is insured, and if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado; (6) a blank space, designated for the purpose, in which the kind of sirup shall be stated; (7) a blank space, designated for the purpose, in which the locality in which the sirup was produced shall be stated if known; (8) a blank space, designated for the purpose, in which the condition of the sirup shall be stated; (9) if the sirup is in barrels, drums or jackets, the gross, tare, and net weight, or number of gallons; (10) if in cases, the number of cases and size of containers; (11) if in bulk for storage in tanks, the weight and/or the number of gallons; (12) the word "negotiable" or "nonnegotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for sirup stored in a warehouse, shall specify a period, not exceeding one year, for which the sirup is accepted for storage under the Act and the regulations in this part, Provided, however, That no receipt shall be issued for sugarcane sirup stored without refrigeration in barrels for a period extending beyond March 1, following the year in which produced. Upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of sirup in his warehouse, if he then continues to act as a licensed warehouseman, shall issue a new receipt for a further specified period not exceeding one year; provided it is actually determined by a licensed inspector that the sirup has not deteriorated and that it is in proper condition for storage for another year, and provided further, that this provision shall not relate to sirup stored in wooden barrels. If the warehouseman con-

*†For statutory and source citations, see note to § 108.1.

tinues to act as a public, but not as a licensed warehouseman, he may issue a new nonlicensed receipt.

(c) The grade stated in a receipt issued for sirup stored in a warehouse shall be stated as determined by the licensed inspector who last inspected the sirup before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) that the sirup covered by the receipt was inspected by a licensed inspector, and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the sirup covered by the receipt.

(d) Whenever the grade of sirup is stated in a receipt issued for sirup stored in a warehouse, such grade shall be stated in accordance with §§ 108.65–108.67.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words “Not graded on request of depositor.”

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.* [Reg. 4, sec. 1, SRA, BAE 89, Dec. 2, 1924, as amended Dec. 14, 1926.]

108.17 Copies of receipts. Copies of all receipts shall be made, and all such copies, except those issued in lieu of the original in case of lost or destroyed receipts, shall, if there be no statute of the United States or law of a State providing otherwise, have clearly and conspicuously printed or stamped thereon the words “Copy—Not Negotiable.”*† [Reg. 4, sec. 2]

108.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success and (2) a bond in amount double the value, at the time the bond is given, of the sirup represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i)

preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, to the extent of double the amount of the bond.*† [Reg. 4, sec. 3]

108.19 Approval of form of receipt. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Chief of the Bureau; (b) upon distinctive paper specified by him; (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing; and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

108.20 Partial delivery of sirup. If a warehouseman deliver a part only of a lot of sirup for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the sirup. The new receipt shall show the date of issuance and also indicate the number and date of the old receipt.*† [Reg. 4, sec. 5]

108.21 Return of receipts before delivery of sirup. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver sirup for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver sirup for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.*† [Reg. 4, sec. 6]

108.22 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly or indirectly, by any means whatsoever, compel or attempt to compel the depositor of any sirup stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 7]

DUTIES OF LICENSED WAREHOUSEMAN

108.23 Sirup must be inspected. (a) No warehouseman shall accept sirup for storage until it has been inspected and approved by a licensed inspector.

(b) All sirup, the identity of which is not to be preserved, or has not been preserved, shall be accepted for and delivered out of storage only on the basis of grades and weights or quantities determined by licensed inspectors and weighers.* [Reg. 5, sec. 1, SRA, BAE 89, as amended Dec. 14, 1926.]

108.24 Insurance; requirements. (a) Each warehouseman, when so requested in writing by the depositor of or the lawful holder of the receipt for any sirup, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such sirup while in his custody insured in his own name, or arrange for its in-

*†For statutory and source citations, see note to § 108.1.

insurance otherwise, to the extent so requested, against loss or damage by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the sirup is not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all sirup.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 108.6, and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice stating briefly the conditions under which sirup will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 2]

108.25 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

108.26 Care of sirup in storage. Each warehouseman shall at all times exercise such care in regard to sirup in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. If sirup is stored under refrigeration a temperature not in excess of 38° Fahrenheit shall be maintained at all times in the licensed rooms or compartments and temperature records or charts showing correct temperature readings made at least four times daily shall be kept. Such records or charts shall be in such form as the Bureau may approve.* [Reg. 5, sec. 4, SRA, BAE 89, as amended Dec. 14, 1926]

108.27 Care of nonlicensed sirup or other commodities. If at any time a warehouseman shall handle sirup other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to it as not to endanger the sirup in his custody as a warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision

that said commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of, or impair the insurance on sirup covered by licensed receipts.*† [Reg. 5, sec. 5]

108.28 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety, approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancellation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 6]

108.29 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for service rendered. Before a license to conduct a warehouse is granted under the Act, the warehouseman shall file with the Bureau a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 108.6, and at such other places, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 7]

108.30 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving sirup for storage and delivering sirup out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such office or warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) If the warehouse is not to be kept open as above required, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.*† [Reg. 5, sec. 8]

108.31 Numbered tags to be attached to sirup. Each warehouseman shall, upon acceptance for storage of any lot of sirup, the identity of which is to be preserved, take such action as will result

*†For statutory and source citations, see note to § 108.1.

in preserving the identity of the product while in storage. He shall immediately assign a lot number to each such lot, and shall plainly and indelibly stamp, stencil, print, or otherwise appropriately mark the lot number on all packages in the lot. He shall attach to such lot a tag of good quality, which shall at all times be clearly visible and shall identify the lot. Such tag shall show the lot number, the number of the receipt issued covering the sirup, the number of packages in the lot, the type or style of packages, the kind of sirup, the grade, if determined, the net weight or number of gallons of sirup in the lot, and the date it entered storage.* [Reg. 5, sec. 9, SRA, BAE 89, as amended Dec. 14, 1926]

108.32 System of accounts. Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, or his authorized representative, which shall show for each lot of sirup the name and address of the depositor, the lot number mentioned in § 108.31, the gross, tare, and net weight of sirup if in barrels, drums, or jackets, the number of cases and size of containers, if in cases, the grade, when grade is required to be or is ascertained, the dates received for and delivered out of storage, the receipts issued and canceled, and a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies.*† [Reg. 5, sec. 10]

108.33 Reports. Each warehouseman shall, from time to time, make such reports as the Chief of the Bureau may require, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.*† [Reg. 5, sec. 11]

108.34 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Bureau, an exact copy of each report submitted by such warehouseman under §§ 108.33, 108.45.*† [Reg. 5, sec. 12]

108.35 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to Washington or to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as the Bureau may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 13]

108.36 Inspections and examination of warehouses. Each warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 14]

108.37 Weighing, testing, measuring apparatus; inspection. The apparatus used for determining the weight, quantity, or quality stated in a receipt or certificate shall be subject to examination by any officer or agent of the Department of Agriculture employed for such purpose. If the Bureau shall disapprove such apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight, quantity, or quality of sirup for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 15]

108.38 Care in storage. Each warehouseman shall keep the stock stored in his licensed warehouse in an orderly manner, shall provide sufficient aisle space so as to permit easy and ready access to any and all lots of sirup stored therein, and shall so store each lot as to facilitate sampling of sirup and inspection for condition. The warehouseman shall at all times keep his warehouse clean and free from all litter.*† [Reg. 5, sec. 16]

108.39 Water or ash in sirup. The warehouseman shall not accept for storage in his warehouse any sugarcane sirup which contains more than 30 percent by weight of water or more than 2.5 percent by weight of ash; nor shall he accept maple sirup containing in excess of 35 percent by weight of water or which weighs less than 11 pounds to the gallon; nor shall he accept honey weighing less than 11 pounds 12 ounces to the gallon, or containing in excess of 25 percent of water, or more than 25 percent of ash or 8 percent of sucrose.* [Reg. 5, sec. 17, SRA, BAE 89, as amended Aug. 3, 1932]

108.40 Deteriorating sirup; reconditioning. If the warehouseman considers that any sirup in his warehouse is out of condition, or becoming so, he shall direct the licensed inspector to examine the sirup in question, and, if such inspector finds such sirup to be out of condition or becoming so, and he is of opinion that such sirup can be brought back into condition by reprocessing or other means, or that further deterioration can be prevented, the warehouseman shall give immediate notice of the facts to the persons, and in the manner, specified in § 108.41 (b), (c). If, within 24 hours after the dispatch of such notice, the owners of such sirup have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the licensed inspector, shall subject the sirup to the proper reconditioning process in his licensed warehouse to the extent to which it is equipped with apparatus suitable for the purpose, otherwise in any other warehouse so equipped.*† [Reg. 5, sec. 18]

108.41 Deteriorating sirup; handling. (a) If a warehouseman, with the approval of the licensed inspector, shall determine that any sirup is deteriorating and that such deterioration cannot be stopped by processing or otherwise, he shall give immediate notice thereof in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the sirup is stored; (2) the quantity, kind, and grade of the sirup at the time the notice is given; (3) the actual condition of the sirup as nearly as can be ascertained, and the reason, if known, for such condition; and (4)

*†For statutory and source citations, see note to § 108.1.

the outstanding receipts covering the sirup out of condition, giving the number and date of each such receipt and the quantity, the kind, and grade of the sirup as stated in each such receipt.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman; (2) to the person who originally deposited the sirup; (3) to any other persons known by the licensed warehouseman to be interested in the sirup; (4) to the Chief of the Bureau; and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. If the holders of the receipts and the owners of the sirup are known to the warehousemen and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person, interested in any sirup or the receipt covering such sirup stored in a licensed warehouse, may, in writing, notify the warehouseman of his interest, and such warehouseman shall keep a record of that fact. If such person requests in writing that he be notified regarding the condition of any such sirup and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) If the sirup advertised in accordance with the requirements of this section has not been removed from storage by the owner thereof within seven days from the dispatch of notice of its being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner, after giving 7 days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any sirup after sending notification of its condition in accordance with this section.*† [Reg. 5, sec. 19]

108.42 Excess storage. If at any time a warehouseman shall be offered for storage in his warehouse sirup in excess of the licensed capacity as shown on his license, he shall not accept such sirup until he has first secured authority through an amended license, and after such authority has been granted, the warehouseman shall continue to so arrange the sirup as not to obstruct free access thereto and the proper use of sprinklers or other fire-protection equipment provided for such warehouse.*† [Reg. 5, sec. 20]

108.43 Removal of sirup from storage. Except as may be provided by law or the regulations in this part, each warehouseman, (a) upon proper presentation and surrender of a receipt for sirup stored other than as identity-preserved and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt sirup of the same grade and quantity specified in such receipt; and, (b) upon proper presentation and surrender of a receipt for sirup the identity of which was to have been preserved during the storage period and upon payment or tender of all ad-

vances and legal charges, shall deliver to the person lawfully entitled thereto the identical sirup covered by the surrendered receipt. Should it become necessary to remove sirup from the warehouse to protect the interests of depositors prior to the return and cancellation of receipts, the warehouseman shall immediately notify the Chief of the Bureau of such removal and of the necessity therefor.* [Reg. 5, sec. 21, SRA, BAE 89, as amended Dec. 14, 1926]

108.44 Compliance with State laws and contracts. Each warehouseman shall faithfully perform his obligations as a warehouseman under the laws of the State in which he is conducting his warehouse and such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of sirup in such warehouse.*† [Reg. 5, sec. 22]

108.45 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegraph to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 23]

108.46 Copies of inspection or weight certificate; filing. When an inspection or weight certificate has been issued by a licensed inspector or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the sirup covered by such certificate is stored, and such certificate shall become a part of the records of the warehouseman.*† [Reg. 5, sec. 24]

FEES

108.47 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to a sampler, grader, weigher, or an inspector.* [Reg. 6, sec. 1, SRA, BAE 89, as amended June 29, 1931]

108.48 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application by a warehouseman, a fee at the rate of \$1 for each 5,000 gallons of the storage capacity, or fraction thereof, determined in accordance with § 108.12 (a), but in no case less than \$10 nor more than \$200, and, for each re-examination or reinspection applied for by such warehouseman, a fee based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.* [Reg. 6, sec. 2, SRA, BAE 89, as amended June 29, 1931]

108.49 Advance deposit. Before any warehouseman's license or amendment thereto, or any sampler's, grader's, weigher's, or inspector's license, is granted, or an original examination or inspection, or re-examination or reinspection, applied for by a warehouseman is made, pursuant to the regulations in this part, the warehouseman, and/or sampler, grader, weigher, or inspector, shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made

*†For statutory and source citations, see note to § 108.1.

in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."* [Reg. 6, sec. 3, SRA, BAE 89, as amended June 29, 1931]

108.50 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 108.49 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS AND WEIGHERS

108.51 Inspector's and weigher's application. (a) Application for licenses to inspect and grade or to weigh sirup under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-first birthday; (2) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which sirup sought to be inspected and weighed under such license is or may be stored; (3) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose; (4) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient; (5) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part, so far as the same may relate to him; and (6) such other information as the bureau may deem necessary, Provided, That when an application for a license to inspect sirup is filed by a person who does not intend to inspect for any particular licensed warehouseman but who does intend to inspect sirup stored or to be stored in a licensed warehouse or warehouses and to issue inspector's certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such sirup, it shall not be necessary to furnish such statement as is required by (3) of this paragraph.

(c) The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to inspect and to weigh upon complying with all the requirements of this section.*† [Reg. 7, sec. 1]

108.52 Examination of applicant. Each applicant for a license as an inspector or as a weigher and each licensed inspector or licensed weigher shall, whenever requested by an authorized agent of the Department of Agriculture designated by the Chief of the Bureau for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.*† [Reg. 7, sec. 2]

108.53 Posting of license. Each licensed inspector shall keep his license conspicuously posted in the office where all or most of the inspecting is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Bureau.*† [Reg. 7, sec. 3]

108.54 Duties of licensees. Each inspector and each weigher, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect or weigh and certificate the condition, grade, or weight for storage of sirup stored or to be stored in a licensed warehouse if such sirup be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection or weight certificate shall be issued under the Act for sirup not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

108.55 Inspection certificate; form. Each inspection certificate issued under the Act by a licensed inspector shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (a) the caption "United States Warehouse Act Sirup Inspection Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the sirup is or is to be stored; (d) the date of the certificate; (e) the location of the sirup at the time of inspection; (f) the identification number of each lot of sirup, given in accordance with § 108.31; (g) the grade and condition of the sirup for storage at the time of inspection; (h) the name of the locality in which produced, if known; (i) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder; (j) a blank space designated for the purpose in which may be stated any general remarks on the condition of the sirup; and (k) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.* [Reg. 7, sec. 5, SRA, BAE 89, as amended June 3, 1926]

*†For statutory and source citations, see note to § 108.1.

108.56 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act Sirup Weight Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the warehouse in which the sirup is to be stored; (d) the date of the certificate; (e) the location of the sirup at the time of weighing; (f) the identification mark of each lot of sirup given in accordance with § 108.31; (g) the gross, tare, and net weight of the sirup if in barrels, drums, or jackets; or the number of cases and size of cans if in cases; (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part; provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

108.57 Combined inspection and weight certificate. The grade, condition, and weight of any sirup ascertained by a licensed inspector and/or licensed weigher may be stated on a certificate meeting the combined requirements of §§ 108.55, 108.56, if the form of such certificate shall have been approved for the purpose by the Bureau.*† [Reg. 7, sec. 7]

108.58 Copies of certificates to be kept. Each licensed inspector and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested in the sirup, a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the sirup covered by the certificate is stored.*† [Reg. 7, sec. 8]

108.59 Licensees to permit and assist in examination. Each licensed inspector and each licensed weigher shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine at any time his books, papers, records and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 108.32, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector or licensed weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 9]

108.60 Reports. Each licensed inspector and each licensed weigher shall, from time to time, when requested by the Bureau, make report on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed inspector or licensed weigher.*† [Reg. 7, sec. 10]

108.61 Licenses; suspension; revocation. Pending investigation, the Secretary may, whenever he deems necessary, suspend the license of an inspector or of a weigher temporarily without hearing.

Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector or weigher, or when the inspector or weigher has ceased to perform such services at the warehouse, the Secretary may, without hearing, suspend or cancel the license issued to such inspector or weigher. The Secretary may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or cancel a license issued to an inspector or a weigher when such inspector or weigher has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector or licensed weigher. As soon as it shall come to the attention of a warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify in writing the Bureau. Before the license of any inspector or weigher is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or by his representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 108.72.*† [Reg. 7, sec. 11]

108.62 Suspended or revoked license; return; termination of license. (a) If a license issued to an inspector or to a weigher is suspended, revoked, or canceled by the Secretary, it shall be returned to the Secretary. At the expiration of any period of suspension of a license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector or weigher to whom it was originally issued, and it shall be posted as prescribed in § 108.53 (b).

(b) Any license issued to an inspector or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be suspended, revoked, or canceled. Thereupon the license of such inspector or weigher shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended, revoked, or canceled, the Secretary shall issue a new license to the inspector or weigher, omitting the names of the warehouses for which licenses have been so suspended, revoked or canceled. Such new licenses shall be posted as prescribed in § 108.53.*† [Reg. 7, sec. 12]

108.63 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to an inspector or a weigher, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.*† [Reg. 7, sec. 13]

108.64 Unlicensed inspector or weigher; misrepresentation. No person shall in any way represent himself to be an inspector or weigher licensed under the Act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the Act.*† [Reg. 7, sec. 14]

SIRUP INSPECTION AND CLASSIFICATION

108.65 Classification; statement. Whenever the kind, grade, or other class or condition of sirup is required to be or is stated for the

*†For statutory and source citations, see note to § 108.1.

purposes of this Act and the regulations in this part, it shall be stated in accordance with §§ 108.65–108.67.*† [Reg. 8, sec. 1]

108.66 Standards to be used. Until such time as official sirup grades of the United States are in effect, the kind, grade, and condition of sirup shall be stated as far as applicable (a) in accordance with the State standards, if any, established in the State in which the warehouse is located; (b) in the absence of any State standards, in accordance with the standards, if any, adopted by any sirup organization or by the sirup trade generally in the locality in which the warehouse is located, subject to the disapproval of the Chief of the Bureau; or (c) in the absence of the aforesaid standards in accordance with any standards approved by the Chief of the Bureau.*† [Reg. 8, sec. 2]

108.67 Statement of kind, grade, condition. Whenever the kind, grade or other class or condition of sirup is stated for the purposes of this Act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the sirup. In case of doubt as to the kind, grade, or condition of a given lot of sirup, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of sirup offered for storage.*† [Reg. 8, sec. 3]

APPEAL OF GRADES

108.68 Conditions and procedure of appeal. (a) If a question arises as to whether the kind, grade, or condition of the sirup was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the sirup involved may, after reasonable notice to the other party, submit the question to the Chief of Bureau, who may appoint a committee to make a determination. The decision of the committee shall be final, unless the Chief shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and be canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of kind, grade, or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Chief of Bureau or his representative shall decide that the expense should be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

108.69 Bonds required. Every person applying for a license, or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such be subject to all portions of the regulations in this part except § 108.5, so far as they may relate to warehousemen. If there is a

law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of sirup, and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 108.11, 108.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount not less than \$5,000, as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of sirup and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

108.70 Publications. Publications under the Act and the regulations in this part shall be made in service and regulatory announcements of the Bureau of Agricultural Economics, and such other media as the Chief of that Bureau may from time to time designate for the purposes.*† [Reg. 10, sec. 2]

108.71 Information of violations. Every person licensed under the Act shall immediately furnish the Chief of the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

108.72 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except § 108.68, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by an official of the Department of Agriculture designated by him for the purpose, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary or an official of the Department of Agriculture designated by him for the purpose. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or an official of the Department of Agriculture authorized by the Secretary. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated

*†For statutory and source citations, see note to § 108.1.

therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department of Agriculture. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

108.73 No conflict with laws. Nothing in the regulations in this part shall be construed to conflict with, or to authorize any conflict with or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, inspectors, or weighers, nor shall the regulations in this part be construed so as to limit the operation of any statute of the United States relating to warehouses, warehousemen, inspectors, or weighers now in force in the District of Columbia, or in any Territory or other place under the exclusive jurisdiction of the United States.*† [Reg. 10, sec. 5]

108.74 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 6]

PART 109—DRIED FRUIT WAREHOUSES

Sec.		Sec.	
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DEFINITIONS

Section 109.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 109.1 to 109.81, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 109.1 to 109.81, inclusive, is Regulations for warehousemen storing dried fruit, Department of Agriculture, July 1934. (SRA, BAE 88, rev.)

109.2 Terms defined. For the purposes of the regulations in this part, unless the context otherwise require, the following terms shall be construed respectively to mean—

(a) **Dried fruit.** Only unprocessed dried prunes, apricots, peaches, pears, apples, raisins, and figs which have not been prepared or packed for distribution to the consuming trade. Dried fruit which has been subjected to an initial bleaching process, prior to entering storage, shall not be deemed to have been processed.

(b) **The Act.** The United States Warehouse Act approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(c) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Designated representative.** The Chief of the Bureau of Agricultural Economics.

(f) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

(g) **Department.** United States Department of Agriculture.

(h) **Bureau.** The Bureau of Agricultural Economics.

(i) **Regulations.** Rules and regulations made under the Act by the Secretary.

(j) **Warehouse.** Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected enclosure in which dried fruit is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which dried fruit is or may be stored and for which a license has been issued under the Act.

(k) **Warehouseman.** Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing dried fruit and holding a warehouse license.

(l) **License.** A license issued under the Act by the Secretary.

(m) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(n) **Licensed inspector.** A person licensed under the Act by the Secretary, or his designated representative, to sample, to inspect, to grade, and to certificate the grade and condition for storage of dried fruit.

(o) **Licensed weigher.** A person licensed under the Act by the Secretary, or his designated representative, to weigh and to certificate the weight of dried fruit stored or to be stored under the Act.

(p) **Receipt.** A warehouse receipt.*† [Reg. 1, sec. 2]

WAREHOUSE LICENSES

109.3 Application forms. Applications for license under sections 4 and 9 of the Act (46 Stat. 1463, 1464; 7 U.S.C. 244, 248), and for amendments thereto, shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application.*† [Reg. 2, sec. 1]

109.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of dried fruit, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, that the warehouseman is deficient financially, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.*† [Reg. 2, sec. 2]

109.5 Net assets required. (a) Any warehouseman conducting a warehouse licensed or for which application for license has been made under the Act, shall have and maintain above all exemptions

and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 30 cents per hundredweight of the maximum number of hundredweight that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000, and need not be more than \$100,000.

(b) If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability.

(c) Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 109.12 (b), but in no event shall a warehouseman be licensed who has not at least \$5,000 net assets.*† [Reg. 2, sec. 3]

109.6 License shall be posted. Immediately upon receipt of his license or of any amendment thereto, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

109.7 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent, (b) has parted, in whole or in part, with his control over the licensed warehouse, (c) is in process of dissolution or has been dissolved, (d) has ceased to conduct such licensed warehouse, or (e) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 109.78.*† [Reg. 2, sec. 5]

*†For statutory and source citations, see note to § 109.1.

109.8 Return of suspended or revoked warehouse license. When a license issued to a warehouseman terminates or is suspended or revoked by the Secretary, or his designated representative, it shall be returned to the Department. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension, and the reason therefor, shall be endorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 109.6; Provided That in the discretion of the Secretary or his designated representative a new license may be issued.*† [Reg. 2, sec. 6]

109.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same number.*† [Reg. 2, sec. 7]

109.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

109.11 Time of filing. Unless the warehouseman has previously filed with the Secretary, or his designated representative, the necessary bond required by § 109.12, he shall file such bond within a time, if any, specified by the Secretary, or his designated representative, said bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

109.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of 30 cents per hundredweight or fractional part thereof, of the maximum number of hundredweight that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act, and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 109.11–109.15.

(b) In case of a deficiency in net assets under § 109.5, there shall be added to the amount of the bond, fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added

to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

109.13 Amendment to license. If application is made under § 109.3, for an amendment of a license and no bond previously filed by the warehouseman under §§ 109.11–109.15 covers obligations arising during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the Act, file with the Secretary, or his designated representative, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, or his designated representative, amending or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

109.14 New bond required each year. Whenever a continuous form of license has been issued such license shall not be effective beyond 1 year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by the Secretary, or his designated representative, prior to the date on which that license would have expired had it been issued for but 1 year, subject to the provisions of § 109.13.*† [Reg. 3, sec. 4]

109.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purpose of the Act and the regulations in this part until it has been approved by the Secretary, or his designated representative.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

109.16 Form. (a) Every receipt, whether negotiable or nonnegotiable, issued for dried fruit stored in a warehouse, shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws; (4) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship; (5) the tag number given to each lot of dried fruit in accordance with § 109.37, and the location of the fruit in the warehouse; (6) a statement conspicuously placed, whether or not the dried fruit is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado; (7) a blank space designated for the pur-

*†For statutory and source citations, see note to § 109.1.

pose in which the condition of the dried fruit shall be stated; (8) a blank space designated for the purpose in which the variety of the dried fruit shall be stated; (9) the net weight; (10) the words "Negotiable" or "Nonnegotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; and (11) a statement indicating the amount of shrinkage agreed upon between the depositor and the warehouseman.

(b) Every receipt, whether negotiable or nonnegotiable, issued for dried fruit stored in a licensed warehouse shall specify a period not exceeding 1 year, for which the dried fruit is accepted for storage under the Act and the regulations in this part, but, upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors in the warehouse, shall, if he then continue to act as a licensed warehouseman, issue a new receipt for a further specified period not exceeding 1 year, provided it is actually determined by the licensed inspector that the dried fruit is in proper condition for further storage, And provided further, That the warehouseman shall plainly and conspicuously indicate on the face of the new receipt the year in which the crop was harvested.

(c) The grade stated in a receipt issued for dried fruit the identity of which is not to be preserved, stored in a warehouse, shall be stated as determined by the licensed inspector who last inspected the dried fruit before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) That the dried fruit covered by the receipt was inspected by a licensed inspector, and (2) a form of endorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the dried fruit covered by the receipt.

(d) Whenever the grade or other class of dried fruit is stated in a receipt issued for dried fruit stored in a warehouse, such grade or other class shall be stated in accordance with §§ 109.71–109.73.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of the depositor."

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.*† [Reg. 4, sec. 1]

109.17 Copies of receipts. If copies are made of receipts, all such copies, except those issued in lieu of the original in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." If copies are not made then skeleton copies bearing the same numbers as the corresponding original receipts shall be made, but such skeleton copies need not be marked "Copy—Not Negotiable."*† [Reg. 4, sec. 2]

109.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success; and (2) a bond in an amount double the value, at the time the bond is given, of the dried fruit represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, to the extent of double the amount of the bond.*† [Reg. 4, sec. 3]

109.19 Approval of form of receipt. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Chief of the Bureau, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

109.20 Return to Department of unissued receipts. Upon the expiration or revocation of his license, the warehouseman shall deliver to the Department all unissued warehouse receipts, and 1 year after the date of said expiration or revocation of the license said receipts may be destroyed without liability to the warehouseman, or prior thereto if authorized by the warehouseman.*† [Reg. 4, sec. 5]

109.21 Partial delivery of dried fruit. If a warehouseman deliver a part only of a lot of dried fruit for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the dried fruit. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.*† [Reg. 4, sec. 6]

109.22 Return of receipts before delivery of dried fruit. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver dried fruit for which he has issued a

*†For statutory and source citations, see note to § 109.1.

negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver dried fruit for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of dried fruit covered by a nonnegotiable receipt, the receipt itself shall be surrendered for cancelation.*† [Reg. 4, sec. 7]

109.23 Authority for delivery of dried fruit on nonnegotiable receipt. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize the delivery of dried fruit covered by such receipt, together with a bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of dried fruit covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 8]

109.24 Persons authorized to sign warehouse receipts. Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures, the same as if he had personally signed the receipt.*† [Reg. 4, sec. 9]

109.25 Requirements for issuing receipts. Before issuing any receipt under the Act each warehouseman shall, unless he personally weighed, inspected, and graded—if graded—the lot of dried fruit, first obtain either a copy of or the original weight certificate and/or inspection certificate, if any, covering said lot of dried fruit, and said weight and/or inspection certificates shall be filed as a permanent record in the warehouseman's office when the receipt is issued. The number of the warehouse receipt issued for the dried fruit covered by such certificates shall be written on the certificate before filing.*† [Reg. 4, sec. 10]

109.26 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward from time to time, his canceled receipts for auditing to such field offices of the Bureau as may be designated for that purpose.*† [Reg. 4, sec. 11]

109.27 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly or indirectly, by any means whatsoever, compel or attempt to compel the depositor of any dried fruit stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 12]

DUTIES OF LICENSED WAREHOUSEMAN

109.28 Dried fruit must be inspected. No warehouseman shall accept dried fruit for storage until it has been inspected and approved by a licensed inspector, nor store dried fruit the identity of

which is not to be preserved until its grade and/or other classification has been determined by a licensed inspector.*† [Reg. 5, sec. 1]

109.29 Insurance; requirements. (a) Each warehouseman, when so requested in writing by the depositor or the lawful holder of the receipt for any dried fruit, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such dried fruit while in his custody insured in his own name, or arrange for its insurance otherwise, to the extent so requested, against loss or damage by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the dried fruit is not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business and subject to service or process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or telephone, and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all dried fruit.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 109.6, and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice stating briefly the conditions under which dried fruit will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.

(d) If at any time a fire should occur at or within any warehouse it shall be the duty of the warehouseman to report immediately by wire to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 2]

109.30 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

109.31 Loss by shrinkage and rodents. When dried fruit is received for storage, the warehouseman and the depositor shall agree upon an amount to be allowed for natural shrinkage and loss caused by rodents while the dried fruit is in storage, and the amount so agreed upon shall be clearly stated in the warehouse receipt.*† [Reg. 5, sec. 4]

109.32 Care of dried fruit in storage. Each warehouseman shall at all times exercise such care in regard to dried fruit in his

*†For statutory and source citations, see note to § 109.1.

custody as a reasonably careful owner would exercise under the same circumstances and conditions.*† [Reg. 5, sec. 5]

109.33 Care of nonlicensed dried fruit or other commodities. If at any time a warehouseman shall handle dried fruit other than for storage, or shall handle or store any other commodity he shall so protect the same and otherwise exercise such care with respect to it as not to endanger the dried fruit in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision that said commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value or impair the insurance on dried fruit covered by licensed receipts.*† [Reg. 5, sec. 6]

109.34 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety, approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancellation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 7]

109.35 Warehouse charges. A warehouseman shall not make any unreasonable, exorbitant, or discriminatory charge for service rendered. Before a license to conduct a warehouse is granted under the Act, the warehouseman shall file with the Bureau a signed and dated copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor, but such change shall not become effective until 30 days after filing, or if exception thereto is taken by the Department. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 109.6, and at such other places, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 8]

109.36 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving dried fruit for storage and delivering dried fruit out of storage every business day for a period of not less

than 6 hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such office or warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) If the warehouse is not to be kept open as above required, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.*† [Reg. 5, sec. 9]

109.37 Numbered tags to be attached to dried fruit. Each warehouseman shall, upon acceptance for storage of any lot of dried fruit to be specially binned, or otherwise stored so that the identity of the lot may be preserved, attach to such bin or lot a tag of good quality which shall at all times be clearly visible and shall identify the lot. Such tag shall show the lot number, the number of the receipt issued to cover such dried fruit, the kind and variety of the dried fruit, the grade or class, if determined, the weight of the dried fruit at the time it entered storage, and the date it entered storage.*† [Reg. 5, sec. 10]

109.38 Grade and weight determinations. All dried fruit the identity of which is not to be preserved or has not been preserved shall be accepted for and delivered out of storage only on the basis of grades and weights determined by licensed inspectors and weighers.*† [Reg. 5, sec. 11]

109.39 Deliveries from storage. Except as may be provided by law or the regulations in this part, each warehouseman (a) upon proper presentation of a receipt for any dried fruit, other than identity-preserved dried fruit, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt, dried fruit of the grade and quantity specified in such receipt, after making due allowance for such shrinkage as the receipt stipulates, and (b) upon proper presentation of a receipt for any dried fruit, the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges shall deliver to the person lawfully entitled thereto the identical dried fruit stored in his warehouse.*† [Reg. 5, sec. 12]

109.40 System of accounts. Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, or his authorized representative, which shall show for each lot of dried fruit the name of the depositor, the weight of the dried fruit, the grade and/or other class when grade and/or other class is required to be or is ascertained, the location in the warehouse, the dates received for and delivered out of storage, the receipts issued and canceled, a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case

*†For statutory and source citations, see note to § 109.1.

of dried fruit the identity of which is to be preserved, the tag number mentioned in § 109.37 shall be shown.*† [Reg. 5, sec. 13]

109.41 Reports. Each warehouseman shall, from time to time, make such reports as the Chief of the Bureau, or his representative, may require, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.*† [Reg. 5, sec. 14]

109.42 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Bureau, an exact copy of each report submitted by such warehouseman under § 109.41.*† [Reg. 5, sec. 15]

109.43 Inspection and examination of warehouses. Each warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 16]

109.44 Weighing apparatus; inspection. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate shall be subject to examination by any officer or agent of the Department of Agriculture employed for such purpose. If the Bureau shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any dried fruit for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 17]

109.45 Warehouse to be kept clean. Each warehouseman shall keep his warehouse clean and free from trash, excessive dirt, rubbish, and scattered dried fruit. He shall also exercise every precaution to keep his warehouse free of rats, insects, or other pests that might cause damage or injury to dried fruit in storage.*† [Reg. 5, sec. 18]

109.46 Fumigation of warehouse. The warehouseman shall fumigate his warehouse with such chemicals as may be approved by the Chief of the Bureau, or use other proper means, as often as may be necessary to prevent the development of or to destroy insect life.*† [Reg. 5, sec. 19]

109.47 Suitability for storage. The warehouseman shall not under any circumstances accept for storage in his warehouse any dried fruit that is not dry or that is improperly cured or that is otherwise of a condition rendering it unsuitable for storage.*† [Reg. 5, sec. 20]

109.48 Reconditioning dried fruit. If the warehouseman considers that any dried fruit in his warehouse is out of condition, or becoming so, he shall direct the licensed inspector to examine the dried fruit in question, and, if such inspector finds such dried fruit to be out of condition or becoming so, and he is of the opinion that

such dried fruit can be brought back into condition by mechanical or other means, or that further deterioration can be prevented, the warehouseman shall give immediate notice of the facts to the persons and in the manner specified in § 109.49 (b), (c). If, within 24 hours after the giving of such notice, the owners of such dried fruit have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the licensed inspector, shall subject the dried fruit to the proper reconditioning process in his licensed warehouse to the extent to which it is equipped with machinery suitable for the purpose, otherwise in any other warehouse so equipped.*† [Reg. 5, sec. 21]

109.49 Deteriorating dried fruit. (a) If a warehouseman, with the approval of the licensed inspector, shall determine that any dried fruit is deteriorating and that such deterioration cannot be stopped, he shall give immediate notice thereof in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the dried fruit is stored, (2) the quantity, kind, and grade of the dried fruit at the time the notice is given, (3) the actual condition of the dried fruit as nearly as can be ascertained and the reason, if known, for such condition, and (4) the outstanding receipts covering the dried fruit out of condition, giving the number and date of each such receipt and the quantity, the kind, and grade of the dried fruit as stated in each such receipt.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman, (2) to the person who originally deposited the dried fruit, (3) to any other persons known by the licensed warehouseman to be interested in the dried fruit, (4) to the Chief of the Bureau, and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. If the holders of the receipts and the owners of the dried fruit are known to the warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested to do so, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person, interested in any dried fruit or the receipt covering such dried fruit stored in a licensed warehouse, may, in writing, notify the warehouseman of his interest, and such warehouseman shall keep a record of that fact. If such person request in writing that he be notified regarding the condition of any such dried fruit and agree to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) If the dried fruit advertised in accordance with the requirements of this section has not been removed from storage by the owner thereof within 7 days from the date of notice of its being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner, after giving 7 days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

*†For statutory and source citations, see note to § 109.1.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any dried fruit after sending notification of its condition in accordance with this section.*† [Reg. 5, sec. 22]

109.50 Excess storage. If at any time a warehouseman shall be offered for storage in his warehouse dried fruit in excess of the licensed capacity as shown on his license, he shall not accept such dried fruit until he has first secured authority through an amended license, and after such authority has been granted the warehouseman shall continue to so arrange the dried fruit as not to obstruct free access thereto and the proper use of sprinklers or other fire-protection equipment provided for such warehouse.*† [Reg. 5, sec. 23]

109.51 Delivery from storage. Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any dried fruit from the warehouse, or the part thereof designated in the receipt, unless such receipt is first surrendered and canceled. Under no circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall dried fruit be removed from the warehouse before the surrender of receipts, and immediately upon any such removal the warehouseman, shall notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 24]

109.52 Signs on licensed warehouse. (a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) the name and license number of the licensee, (2) the name of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purposes of the Act and the regulations in this part, subject to the approval of the Bureau.

(d) Immediately upon the expiration or suspension or revocation of a license all signs required under this section shall be removed from the warehouse.

(e) No sign which might convey to the public a tenancy in conflict with that of the warehouseman shall remain on any licensed warehouse, and in any event no sign, whether for advertising or any other purpose, shall be placed on any licensed warehouse without the prior approval of the Chief of the Bureau or his representative.*† [Reg. 5, sec. 25]

FEES

109.53 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to a weigher or an inspector.*† [Reg. 6, sec. 1]

109.54 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application by a warehouseman, a fee at the rate of \$1 for each 1,000 hundredweight of the storage capacity, or fraction thereof, determined in accordance with § 109.12 (a), but in no case less than \$10 nor more than \$200, and for each re-examination or reinspection applied for by such warehouseman, a fee based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.*† [Reg. 6, sec. 2]

109.55 Advance deposit. Before any warehouseman's license or amendment thereto, or any weigher's and/or inspector's license is granted, or an original examination or inspection, or re-examination or reinspection, applied for by a warehouseman, is made, pursuant to the regulations in this part, the warehouseman, and/or weigher and/or inspector, shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "United States Department of Agriculture."*† [Reg. 6, sec. 3]

109.56 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 109.55 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS AND WEIGHERS

109.57 Inspector's and weigher's application. (a) Application for licenses to inspect and grade or to weigh dried fruit under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which dried fruit sought to be inspected and weighed under such license is or may be stored, (2) a statement

*†For statutory and source citations, see note to § 109.1.

from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (3) satisfactory evidence that he is competent to perform such services, (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part, so far as the same may relate to him, and (5) such other information as the Chief of the Bureau or his representative may deem necessary, Provided, That when an application for a license to inspect dried fruit is filed by a person who does not intend to inspect for any particular licensed warehouseman but who does intend to inspect dried fruit stored or to be stored in a licensed warehouse and to issue inspection certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such dried fruit, it shall not be necessary to furnish such statement as is required by (2) of this paragraph.

(c) The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to inspect and to weigh upon complying with all the requirements of this section.*† [Reg. 7, sec. 1]

109.58 Examination of applicant. Each applicant for a license as an inspector or as a weigher and each licensed inspector or licensed weigher shall, whenever requested by an authorized agent of the Department designated by the Chief of the Bureau for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.*† [Reg. 7, sec. 2]

109.59 Posting of license. Each licensed inspector shall keep his license conspicuously posted in the office where all or most of the inspecting is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Bureau.*† [Reg. 7, sec. 3]

109.60 Duties of licensees. Each inspector and each weigher, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect or weigh and certificate the condition, grade, or weight for storage of dried fruit stored or to be stored in a licensed warehouse, if such dried fruit be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection or weight certificate shall be issued under the Act for dried fruit not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

109.61 Inspection certificate; form. Each inspection certificate issued under the Act by a licensed inspector shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (a) the caption, "United States Warehouse

Act, Dried Fruit Inspection Certificate”, (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the dried fruit is or is to be stored, (d) the date of the certificate, (e) the location of the dried fruit at the time of inspection, (f) the identification number or mark of each lot of dried fruit the identity of which is or is to be preserved, given in accordance with § 109.37, (g) the grade and condition of the dried fruit for storage at the time of inspection, (h) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder, (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the dried fruit, and (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 5]

109.62 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the bureau, and shall embody within its written or printed terms (a) the caption “United States Warehouse Act, Dried Fruit Weight Certificate”, (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the dried fruit is or is to be stored, (d) the date of the certificate, (e) the location of the dried fruit at the time of weighing, (f) the identification number or mark of each lot of dried fruit, the identity of which is or is to be preserved, given in accordance with § 109.37, (g) the net weight of the dried fruit, (h) that the certificate is issued by a licensed weigher under the United States Warehouse Act and the regulations thereunder, and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

109.63 Combined grade, condition, weight certificate. The grade, condition, and weight of any dried fruit ascertained by a licensed inspector and/or licensed weigher may be stated on a certificate meeting the combined requirements of §§ 109.61, 109.62, if the form of such certificate shall have been approved for the purpose by the Bureau.*† [Reg. 7, sec. 7]

109.64 Copies of certificates to be kept. Each licensed inspector and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested in the dried fruit a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the dried fruit covered by the certificate is stored.*† [Reg. 7, sec. 8]

109.65 Licensees to permit and assist in examination. Each licensed inspector and each licensed weigher shall permit any officer or agent of the Department, authorized by the Secretary, or his designated representative, for the purpose, to inspect or examine at any time his books, papers, records, and accounts relating to the per-

*†For statutory and source citations, see note to § 109.1.

formance of his duties, under the Act and the regulations in this part and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 109.40, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector or licensed weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 9]

109.66 Reports. Each licensed inspector and each licensed weigher shall, from time to time, when requested by the Chief of the Bureau or his representative, make reports on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed inspector or licensed weigher.*† [Reg. 7, sec. 10]

109.67 Licenses; suspension; revocation. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or of a weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector or weigher, or when the inspector or weigher has ceased to perform such services at the warehouse, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such inspector or weigher has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector or licensed weigher. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify in writing the Chief of the Bureau. Before the license of any inspector or weigher is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 109.78.*† [Reg. 7, sec. 11]

109.68 Suspended or revoked license; return; termination of license. (a) If a license issued to an inspector or to a weigher is suspended or revoked by the Secretary, it shall be returned to the Department. At the expiration of any period of suspension of a license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension, with the reason for such suspension, shall be endorsed thereon, and it shall be returned to the inspector or weigher to whom it was originally issued, and it shall be posted as prescribed in § 109.59.

(b) Any license issued to an inspector or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be suspended or revoked. Thereupon, the license of such inspector or weigher shall be returned to the Department.

If such license is applicable to warehouses other than those for which the licenses have been suspended or revoked, the Secretary, or his designated representative, shall issue a new license to the inspector or weigher, omitting the names of the warehouses for which licenses have been so suspended or revoked. Such new license shall be posted as prescribed in § 109.59.*† [Reg. 7, sec. 12]

109.69 Lost or destroyed license. Upon satisfactory proof of the loss or destruction of a license, issued to an inspector or a weigher, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary, or his designated representative.*† [Reg. 7, sec. 13]

109.70 Unlicensed inspector or weigher; misrepresentation. No person shall in any way represent himself to be an inspector or weigher licensed under the Act unless he holds an unsuspended or unrevoked license issued under the Act.*† [Reg. 7, sec. 14]

DRIED FRUIT INSPECTION AND CLASSIFICATION

109.71 Classification; statement. Whenever the variety, grade, or other class or condition of dried fruit is required to be or is stated for the purposes of this Act and the regulations in this part, it shall be stated in accordance with §§ 109.72, 109.73.*† [Reg. 8, sec. 1]

109.72 Standards to be used. Until such time as official dried fruit grades of the United States are in effect, the variety, grade, and condition of dried fruit shall be stated as far as applicable (a) in accordance with the State standards, if any, established in the State in which the warehouse is located, subject to disapproval of such standards by the Department, (b) in the absence of any acceptable State standards, in accordance with the standards, if any, adopted by any dried fruit organization or by the dried fruit trade generally in the locality in which the warehouse is located, subject to the disapproval of the Chief of the Bureau, or (c) in the absence of the aforesaid standards, in accordance with any standards approved by the Chief of the Bureau.*† [Reg. 8, sec. 2]

109.73 Statement of kind, grade, condition. Whenever the variety, grade, or other class or condition of dried fruit is stated for the purposes of this Act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the dried fruit. In case of doubt as to the variety, grade, or condition of a given lot of dried fruit, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of dried fruit offered for storage. These samples shall be thoroughly mixed, and after being so mixed, from this mixture by quartering a sufficient quantity shall be taken which shall constitute the sample for the purpose of determining the grade.*† [Reg. 8, sec. 3]

APPEAL OF GRADES

109.74 Condition and procedure of appeal. (a) If the question arises as to whether the variety, grade, or condition of the dried fruit

*†For statutory and source citations, see note to § 109.1.

was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the dried fruit involved may, after reasonable notice to the other party, submit the question to such representatives of the Bureau as the Chief of Bureau may appoint. The decision of the representatives of the Bureau shall be final, unless the Chief shall direct a review of the question. Immediately upon making their decision, the representatives of the Bureau shall issue a certificate embodying their findings to the appellants and the licensee or licensees involved.

(b) If the decision of the representatives of the Bureau be that the variety, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and be canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of variety, grade, or condition in accordance with the findings of the representatives of the Bureau.

(c) All necessary and reasonable expenses incident to making such determinations shall be borne by the losing party, unless the Chief of Bureau or his representative shall decide that the expense should be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

109.75 Bonds required. Every person applying for a license, or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part except § 109.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of dried fruit and to store the same in any of said warehouses, may, in lieu of bond or bonds, complying with §§ 109.11, 109.12, file with the Secretary, or his designated representative, a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of dried fruit and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods covered by any amendments to such licenses. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

109.76 Publications. Publications under the Act and the regulations in this part shall be made in such media as the Chief of the Bureau may from time to time designate for the purpose.*† [Reg. 10, sec. 2]

109.77 Information of violations. Every person licensed under the Act shall immediately furnish the Chief of the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

109.78 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except § 109.74, the licensee involved shall be allowed a reasonable time, fixed by the Secretary, or his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by the Secretary, or his designated representative. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary, or his designated representative. Every written entry in the records of the Department made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing, shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

109.79 One document and one license to cover several products. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report, or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.*† [Reg. 10, sec. 5]

109.80 Bond for combination warehouse. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount or net assets and of fees if the full capacity of the warehouse was used for its storage.*† [Reg. 10, sec. 6]

*†For statutory and source citations, see note to § 109.1.

109.81 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 7]

PART 110—CANNED FOOD WAREHOUSES

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DEFINITIONS

Section 110.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 110.1 to 110.78, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 110.1 to 110.78, inclusive, (except for the amendments noted in the text,) is Regulations for warehousemen storing canned food, Department of Agriculture, Aug. 1932. (SRA, BAE 132)

110.2 Terms defined. For the purposes of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **Canned foods.** Fruits and vegetables sterilized by heat and preserved in hermetically sealed containers.

(b) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(c) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Designated representative.** The Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

(f) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(g) **Department.** United States Department of Agriculture.

(h) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(i) **Regulations.** Rules and regulations made under the Act by the Secretary.

(j) **Warehouse.** Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which canned foods are or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which canned foods are or may be stored and for which a license has been issued under the Act.

(k) **Warehouseman.** Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing canned foods and holding a warehouse license.

(l) **License.** A license issued under the Act by the Secretary.

(m) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(n) **Licensed inspector.** A person licensed under the Act by the Secretary to sample, to inspect and/or to certificate the condition of canned foods for storage.

(o) **Licensed grader.** A person licensed under the Act by the Secretary to grade and certificate the grade of canned foods for storage.

(p) **Receipt.** A licensed warehouse receipt issued under the Act, unless otherwise specified.

(q) **Case.** The number of cans filled with fruits or vegetables which, depending upon the size of the cans, would be needed to make the equivalent in contents of a unit commonly known as a case of 24 No. 2 cans. For the purpose of the regulations in this part the products may be either cased or uncased.

(r) **State.** A State, Territory, or District of the United States.*†
[Reg. 1, sec. 2]

WAREHOUSE LICENSES

110.3 Application forms. Application for licenses or for amendments of licenses under the Act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.*†
[Reg. 2, sec. 1]

110.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of canned foods, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the intent of the Act for not issuing such license.*†
[Reg. 2, sec. 2]

110.5 Net assets required. Any warehouseman conducting a warehouse licensed or for which application for licenses has been made shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 20 cents per case of the maximum number of cases that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000, and need not be more than \$100,000.

If such warehouseman has applied for license to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability.

A deficiency in required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 110.12 (b).* [Reg. 2, sec. 3, SRA, BAE 132, as amended July 26, 1937]

110.6 License shall be posted. Immediately upon receipt of his license or of any amendment thereto, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

110.7 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary or his designated representative, may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary or his designated representative, may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole, or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provisions of the Act, or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 110.75.*† [Reg. 2, sec. 5]

110.8 Return of suspended or revoked warehouse license. When a license issued to a warehouseman terminates or is suspended or revoked by the Secretary, or his designated representative, it shall be returned to the Bureau. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon and it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 110.6: Provided, That in the discretion of the Chief of the Bureau a new license may be issued.*† [Reg. 2, sec. 6]

110.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman

*†For statutory and source citations, see note to § 110.1.

a duplicate thereof, or a new license, may be issued under the same number.*† [Reg. 2, sec. 7]

110.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

110.11 Time of filing. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 110.12, he shall file such bond within a time, if any, specified by the Secretary, or his designated representative, such bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

110.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c), the amount of such bond shall be at the rate of 20 cents per case of canned foods of the maximum number of cases that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 110.11–110.15.

(b) In case of a deficiency in net assets under § 110.5, there shall be added to the amount of the bond fixed in accordance with paragraph (a) of this section an amount equal to such deficiency.

(c) If the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

110.13 Amendment to license. If application is made under § 110.3, for an amendment to a license and no bond previously filed by the warehouseman under §§ 110.11–110.15 covers obligations arising during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending,

extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part, may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

110.14 New bond required each year. Whenever a continuous form of license has been issued, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary, or his designated representative, prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 110.13.*† [Reg. 3, sec. 4]

110.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purpose of the Act and the regulations in this part until it has been approved by the Secretary, or his designated representative.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

110.16 Form. (a) Every receipt, whether negotiable or nonnegotiable, issued for canned foods stored in a warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws; (4) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship; (5) the lot number given to each lot of canned foods, in accordance with § 110.32; (6) a statement conspicuously placed, whether or not the canned foods are insured, and if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado; (7) a blank space designated for the purpose in which the kind of canned foods shall be stated; (8) a blank space where the code, can, or other identifying marks may be stated; (9) blank spaces where statements may be made indicating whether the canned foods are cased or uncased, labeled or unlabeled, and if labeled, the principal title of the label; (10) the number of cases and size of containers or cans; (11) the words "Negotiable" or "Nonnegotiable"; and (12) whether the receipt is an "original", "duplicate", or "copy", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Unless otherwise required by the Secretary, or his designated representative, every receipt, whether negotiable or nonnegotiable, issued for canned foods stored in a warehouse shall specify a period, not exceeding one year, for which the canned foods are accepted for storage under the Act and the regulations in this part. Except in the case of canned foods which may be stored only for less than one year, upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified, the ware-

*†For statutory and source citations, see note to § 110.1.

houseman, upon such lawful terms and conditions as may be granted by him to other depositors of canned foods in his warehouse, if he then continues to act as a licensed warehouseman, may issue a new receipt for a further specified period not exceeding one year; provided it is actually determined by a licensed inspector, or subject to the provisions of § 110.24 (b) by an employee of the Bureau, that the canned foods are in proper condition for storage for another year. Whenever it is determined by the Secretary, or his designated representative, that certain canned foods may not be safely stored beyond a fixed time, every receipt, whether negotiable or nonnegotiable, issued for such canned foods shall be plainly marked to show that such canned foods are not accepted for storage beyond such fixed time.

(c) The grade stated in a receipt issued for canned foods shall be stated as determined by a licensed grader, or, subject to the provisions of § 110.24 (b), by an employee of the Bureau, who graded the canned foods on the basis of samples actually drawn not more than 10 days preceding the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) that the canned foods covered by the receipt were inspected and graded by a licensed inspector and grader, or by an official inspector and grader of the Department, as the case may be, and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the canned foods covered by the receipt.

(d) Whenever the grade of canned foods is stated in a receipt issued for canned foods stored in a warehouse, such grade shall be in accordance with §§ 110.68–110.70.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), such receipt shall have clearly and conspicuously stamped or written on the face thereof the words “Not graded on request of depositor.”

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.* [Reg. 4, sec. 1, SRA, BAE 132, Apr. 29, 1932, as amended July 26, 1933]

110.16a Limitation on storage; canned sour cherries. No warehouse receipt issued for canned sour cherries, pitted or unpitted, stored in a warehouse licensed under the United States Warehouse Act, shall cover a period extending beyond April 30 following the year in which the canned cherries were packed. (Issued under § 110.16) [Order, Chief BAE, July 27, 1933]

110.17 Copies of receipts. Either actual copies or skeleton copies of all receipts shall be made, and all copies, except skeleton copies or those issued in lieu of the original, in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the words “Copy—Not Negotiable.”*† [Reg. 4, sec. 2].

110.18 Lost or destroyed receipts; bond. (a) In case of a lost or destroyed receipt, another receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success; and (2) a bond in amount double the value, at the time the bond is given, of the canned foods represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business and is subject to service of process in a suit on the bond in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 3]

110.19 Approval of form of receipt. No receipt shall be issued by a licensed warehouseman except it be (a) in the form prescribed by the Chief of the Bureau; (b) upon distinctive paper specified by him; (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing; and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

110.20 Partial delivery of canned foods. If a warehouseman deliver a part only of a lot of canned foods for which he has issued a negotiable receipt under the Act he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the canned foods. The new receipt shall show the date of issuance and also indicate the number and date of the old receipt.*† [Reg. 4, sec. 5]

110.21 Return of receipts before delivery of canned foods. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver canned foods for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver canned foods for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.*† [Reg. 4, sec. 6]

*†For statutory and source citations, see note to § 110.1.

110.22 Authority for delivery of canned foods on nonnegotiable receipts. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of canned foods covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of canned foods covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 7]

110.23 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly or indirectly, by any means whatsoever, compel or attempt to compel, the depositor of any canned foods stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 8]

DUTIES OF LICENSED WAREHOUSEMAN

110.24 Canned foods must be inspected. (a) No licensed warehouseman shall store canned foods in his licensed warehouse and issue a receipt therefor unless an inspector licensed under this Act, or, subject to the provisions of paragraph (b) of this section, an inspector and/or grader employed by the Bureau and authorized by the Secretary, or his designated representative, to inspect and/or grade canned foods in connection with any canned foods inspection service of the Bureau, has examined them, found them to be in proper condition for storage, and issued an approved certificate certifying as to the condition and/or grade of the canned foods, not more than 10 days prior to the issuance of such receipt. Under no conditions shall swells, springers, leakers, or rusty cans, or any canned foods known to be in violation of either State or Federal food and drugs laws be accepted for storage.

(b) If at any time a warehouseman shall have canned foods, stored or to be stored in his licensed warehouse, inspected and/or graded by an authorized employee of the Bureau, in lieu of a licensed inspector and/or grader, the samples to be inspected and/or graded shall be drawn in an amount and in a manner specified by the Secretary, or his designated representative, by an employee of the Department or by the warehouseman or his representative neither of whom shall be financially interested in such canned foods other than as a bailee for hire, and such Bureau employee shall issue to the warehouseman the approved form of certificate reciting his findings.* [Reg. 5, sec. 1, SRA, BAE 132, as amended July 26, 1933]

110.25 Insurance; requirements. (a) Each warehouseman, when so requested in writing by the depositor of or the lawful holder of the receipt for canned foods, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such canned foods while in his custody insured in his own name, or arrange for their insurance otherwise, to the extent so requested, against loss or damage by fire, lightning, or tornado. When insur-

ance is not carried in the warehouseman's name the receipt shall show that the canned foods are not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all canned foods.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 110.6, and at such other place as the Chief of the Bureau, or his representative, may from time to time designate, a notice stating briefly the conditions under which canned foods will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 2]

110.26 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable report as may be provided for in such contracts.*† [Reg. 5, sec. 3]

110.27 Care of canned foods in storage. Each warehouseman shall at all times exercise such care in regard to the canned foods in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.*† [Reg. 5, sec. 4]

110.28 Care of nonlicensed canned foods, or other commodities. If at any time a warehouseman shall handle canned foods other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to them as not to endanger the canned foods in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision that said commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of or impair the insurance on canned foods covered by licensed receipts.*† [Reg. 5, sec. 5]

*†For statutory and source citations, see note to § 110.1.

110.29 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his receipt books, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancelation and shall be reserved in numerical order thereafter.*† [Reg. 5, sec. 6]

110.30 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for service rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the Bureau a dated copy of his rules and schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges, he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 110.6, and at such other places, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 7]

110.31 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving canned foods for storage and delivering canned foods out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such office or warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) If the warehouse is not to be kept open as above required, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.*† [Reg. 5, sec. 8]

110.32 Numbered tags to be attached to canned foods. Each warehouseman shall, upon acceptance for storage of any lot of canned foods, so store the same that the identity of the lot will be preserved. To each lot of canned foods he shall assign a lot number and shall affix a stack card or identification tag, which shall be at all times visible and shall identify the lot.*† [Reg. 5, sec. 9]

110.33 Identification tag. The warehouseman shall indicate on the stack card or identification tag mentioned in § 110.32, (a) the lot number assigned to the lot of canned foods; (b) the number of cases in the lot; (c) the size of the cans or containers; (d) the can, code, or other identifying marks on the cans, if any; (e) the number of the receipt issued covering the lot; (f) the date they entered storage;

and (g) the kind and grade of canned foods, when grade is determined.*† [Reg. 5, sec. 10]

110.34 System of accounts. Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, or his authorized representative, which shall show for each lot of canned foods the name and address of the depositor, the lot number mentioned in § 110.32, the can, code, or other identifying marks of the lot, the number of cases, size of containers, the grade, when grade is required to be or is ascertained, the dates received for and delivered out of storage, the receipts issued and canceled, a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies.*† [Reg. 5, sec. 11]

110.35 Reports. Each warehouseman shall, from time to time, make such reports as the Bureau may require, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.*† [Reg. 5, sec. 12]

110.36 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Bureau, an exact copy of each report submitted by such warehouseman under §§ 110.35, 110.49.*† [Reg. 5, sec. 13]

110.37 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to Washington or to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as the Bureau may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 14]

110.38 Inspection and examination of warehouse. Each warehouseman shall permit any officer or agent of the Department, including inspectors under the Federal Food and Drugs Act, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make such inspection or examination under this section.*† [Reg. 5, sec. 15]

110.39 Weighing, testing, measuring apparatus. The apparatus used for determining the weight, quantity, or quality stated in a receipt or certificate shall be subject to examination by any officer or agent of the Department employed for such purpose. If the Bureau shall disapprove such apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight, quantity, or quality of canned foods for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 16]

110.40 Care of warehouses. Each warehouseman shall keep the stock stored in his licensed warehouse in an orderly manner, shall

*†For statutory and source citations, see note to § 110.1.

provide sufficient aisle space so as to permit easy and ready access to any and all lots of canned foods stored therein, and shall so store each lot as to facilitate sampling of canned foods and inspection for condition. The warehouseman shall at all times keep his warehouse clean.*† [Reg. 5, sec. 17]

110.41 Proper storage. The warehouseman shall not stack or cause to be stacked canned foods generally known as acid products in close proximity to steam or hot-water radiators or immediately under a metal roof.*† [Reg. 5, sec. 18]

110.42 Proper ventilation. The warehouseman shall take such steps as can be consistently taken to so ventilate his storage that a uniformly cool temperature will be maintained in his warehouse.*† [Reg. 5, sec. 19]

110.43 Heat to be provided. The warehouseman shall provide heat when necessary to avoid freezing.*† [Reg. 5, sec. 20]

110.44 Signs of tenancy. (a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) the name and license number of the licensee (2) the name of the warehouse; (3) whether the warehouseman is owner or lessee; and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part, subject to the approval of the Bureau.

(d) Immediately upon its expiration, suspension, or revocation all reference to the license shall be removed from the warehouse.

(e) No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.*† [Reg. 5, sec. 21]

110.45 Deteriorating canned foods; handling. If a licensed warehouseman or the licensed inspector considers that any canned foods in the licensed warehouse are out of condition or becoming so, the warehouseman shall direct the licensed inspector to examine the canned foods in question or request the Bureau to have one of its authorized inspectors examine such canned foods, and, if such inspector finds such canned foods to be out of condition or becoming so, the warehouseman shall give immediate notice of the facts in the manner and to the persons specified in § 110.46 (a), (b), (c).* [Reg. 5, sec. 22, SRA, BAE 132, as amended July 26, 1933]

110.46 Notification of deteriorating canned foods. (a) The notice required by § 110.45 shall state (1) the warehouse in which the canned foods are stored; (2) the quantity, kind, and grade of the canned foods at the time the notice is given; (3) the actual condition of the canned foods as nearly as can be ascertained, and the reason,

if known, for such condition; and (4) the outstanding receipts covering the canned foods in question, giving the number and date of each such receipt and the quantity, the kind, and grade of the canned foods as stated in each such receipt.

(b) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman; (2) to the person who originally deposited the canned foods; (3) to any other persons known by the licensed warehouseman to be interested in the canned foods; (4) to the Chief of the Bureau; and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. If the holders of the receipts and the owners of the canned foods are known to the warehouseman and cannot in the regular course of the mails be reached within 12 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

(c) Any person interested in any canned goods or the receipt covering such canned foods stored in a licensed warehouse may, in writing, notify the warehouseman of his interest, and such warehouseman shall keep a record of that fact. If such person requests in writing that he be notified regarding the condition of any such canned foods and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(d) If the canned foods advertised in accordance with the requirements of this section have not been disposed of by the owner thereof within five days from the dispatch of notice of their being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner. Before such sale the warehouseman shall consult with proper State and Federal officials administering food and drug laws to ascertain whether the sale of the canned foods might violate either the State or Federal law.

(e) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any canned foods after sending notification of their condition in accordance with this section.*† [Reg. 5, sec. 23]

110.47 Excess storage. If at any time a warehouseman shall be offered for storage in his warehouse canned foods in excess of the licensed capacity as shown on his license, he shall not accept such canned foods until he has first secured authority through an amended license, and after such authority has been granted, the warehouseman shall continue to so arrange the canned foods as not to obstruct free access thereto and the proper use of sprinklers or other fire-protection equipment provided for such warehouse.*† [Reg. 5, sec. 24]

110.48 Removal from storage. Except when it may be necessary to protect the canned foods due to an emergency, or as may be permitted by law or the regulations in this part, a warehouseman shall not remove any canned foods from the warehouse, or the part thereof designated in the receipt, unless such receipt is first surrendered and canceled. If any canned foods are removed from the warehouse prior to the return and cancelation of the receipt, the warehouseman shall

*†For statutory and source citations, see note to § 110.1.

immediately notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 25]

110.49 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegraph to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 26]

110.50 Copies of inspection certificates; filing. When an inspection or grade certificate has been issued by a licensed inspector or grader, a copy of such certificate shall be filed with the warehouseman in whose warehouse the canned foods covered by such certificate are stored, and such certificate shall become a part of the records of the warehouseman.*† [Reg. 5, sec. 27]

110.51 Signatures on warehouse receipts; filing. Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.*† [Reg. 5, sec. 28]

FEES

110.52 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to each inspector and/or grader.*† [Reg. 6, sec. 1]

110.53 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application by a warehouseman, a fee at the rate of \$1 for each 2,000 cases of the storage capacity, or fraction thereof, determined in accordance with § 110.12 (a), but in no case less than \$10 nor more than \$200, and for each re-examination or reinspection applied for by such warehouseman a fee based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.*† [Reg. 6, sec. 2]

110.54 Advance deposit. Before any warehouseman's license, or amendment thereto, or any inspector's and/or grader's license is granted, or before an original examination or re-examination applied for by a warehouseman is made, the warehouseman, the inspector, and/or grader shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, or post-office or express money order, payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."*† [Reg. 6, sec. 3]

110.55 Return of excess deposit. The disbursing clerk of the department shall hold in his custody each advance deposit made under § 110.54 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS AND GRADERS

110.56 Inspector's and grader's application. (a) Application for licenses to inspect and/or grade canned foods under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-first birthday; (2) the name and location of a warehouse or warehouses licensed, or for which application for license has been made under the Act, in which canned foods sought to be inspected and/or graded under such license are or may be stored; (3) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose; (4) satisfactory evidence that he has had at least two years' experience in the inspection and/or grading of the kind of canned foods for which a license is sought or the equivalent of such experience, and that he is competent to perform such services; (5) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him; and (6) such other information as the Bureau may deem necessary, Provided That when an application for a license to inspect and/or grade canned foods is filed by a person who does not intend to serve any one licensed warehouseman but who does intend to inspect and/or grade canned foods stored or to be stored in a licensed warehouse or warehouses and to issue inspector's and/or grader's certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts, issued to cover such canned foods, it shall not be necessary to furnish such statement as is required by (3) of this paragraph.

(c) The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.*† [Reg. 7, sec. 1]

110.57 Examination of applicant. Each applicant for a license as an inspector and/or grader and each licensed inspector and/or grader shall, whenever requested by an authorized agent of the De-

*†For statutory and source citations, see note to § 110.1.

partment, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.*† [Reg. 7, sec. 2]

110.58 Posting of license. Each licensed inspector and/or grader shall keep his license conspicuously posted in the office where all or most of the inspecting is done.*† [Reg. 7, sec. 3]

110.59 Duties of licensees. Each inspector and/or grader, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect and/or grade and certificate the condition, and/or grade, of canned foods stored or to be stored in a licensed warehouse if such canned foods be offered to him under such conditions as permit proper inspection, and/or grading, and the determination of the condition and/or grade thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection and/or grade certificate shall be issued under the Act for canned foods not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

110.60 Inspection and grade certificates; form. Each inspection and/or grade certificate issued under the Act by a licensed inspector or grader shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (a) the caption "United States Warehouse Act Canned Foods Inspection and/or Grade Certificate"; (b) whether it is an original, duplicate, or other copy; (c) the name and location of the warehouse in which the canned foods are or are to be stored; (d) the date of the certificate; (e) the location of the canned foods at the time of the inspection and/or grading; (f) the identification or lot number of each lot of canned foods in accordance with § 110.32; (g) the number of cases in the lot; (h) the number of cans in each case and size of cans; (i) the grade of the canned foods; (j) the kind of canned foods; (k) the can or code marks of each lot, if any; (l) the title of the principal label, if labeled; (m) that the certificate is issued by a licensed inspector and/or grader under the United States Warehouse Act and regulations thereunder; (n) a blank space in which any general remarks on the condition, grade, or other pertinent information may be shown; (o) any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first obtained; and (p) the signature of the licensed inspector, and/or grader. Under no circumstances shall certificates be issued for products known to be in violation of Federal or State food and drug laws.*† [Reg. 7, sec. 5]

110.61 Copies of certificates to be kept. Each licensed inspector and/or grader shall keep for a period of one year in a place accessible to persons financially interested in the canned foods a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the canned foods covered by the certificate are stored.*† [Reg. 7, sec. 6]

110.62 Licensees to permit and assist in examination. Each licensed inspector and/or grader shall permit any officer or agent of

the Department, authorized by the Secretary, or his designated representative, for the purpose, to inspect or examine at any time his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 110.34, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector and/or grader under the Act and the regulations in this part.*† [Reg. 7, sec. 7]

110.63 Reports. Each licensed inspector and/or grader shall, from time to time, when requested by the Bureau, make reports on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed inspector and /or grader.*† [Reg. 7, sec. 8]

110.64 Licenses; suspension; revocation. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector and/or grader temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the licensed inspector and/or grader, or when the inspector and/or grader has ceased to perform such services at the warehouse, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector and/or grader. The Secretary, or his designated representative, may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector and/or grader when such inspector and/or grader has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector and/or grader. As soon as it shall come to the attention of a warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify in writing the Bureau. Before the license of any inspector and/or grader is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253) such licenses shall be furnished by the Secretary, or by his designated representative, a written statement specifying the charges, and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 110.75.*† [Reg. 7, sec. 9]

110.65 Suspended or revoked license; return; termination of license. (a) If a license issued to an inspector and/or grader is suspended or revoked by the Secretary, or his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of a license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector and/or grader to whom it was originally issued, and it shall be posted as prescribed in § 110.58, Provided, That in the discretion of the Chief of the Bureau a new license may be issued without reference to such suspension.

(b) Any license issued to an inspector and/or grader, shall automatically terminate as to any warehouse whenever the license of

*†For statutory and source citations, see note to § 110.1.

such warehouse shall expire or shall be suspended or revoked. Thereupon the license of such inspector and/or grader shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended or revoked, the Secretary, or his designated representative, shall issue a new license to the inspector and/or grader, omitting the names of the warehouses for which licenses have been so suspended or revoked. Such new licenses shall be posted as prescribed in § 110.58.*† [Reg. 7, sec. 10]

110.66 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to an inspector and/or grader, a duplicate thereof may be issued under the same number.*† [Reg. 7, sec. 11]

110.67 Unlicensed inspector and grader; misrepresentation. No person shall in any way represent himself to be an inspector and/or grader under the Act unless he holds an unsuspended or unrevoked license under the Act.*† [Reg. 7, sec. 12]

CANNED FOODS INSPECTION, GRADING, AND CLASSIFICATION

110.68 Classification statement. Whenever the kind, grade, or other class or condition of canned foods is required to be or is stated for the purpose of this Act and the regulations in this part, it shall be stated in accordance with §§ 110.68–110.70.*† [Reg. 8, sec. 1]

110.69 Standards to be used. Until such time as official marketing grades of the United States have been promulgated and are in effect, for the purpose of administering this Act and the regulations in this part, the kind and grade of canned foods shall be stated as far as applicable (a) in accordance with any tentative standards of the Department; (b) in the absence of Federal standards in accordance with the State standards, if any, established in the State in which the warehouse is located; (c) in the absence of any State standards, in accordance with the standards, if any, adopted by any canned foods organization or by the canned foods trade generally in the locality in which the warehouse is located, subject to the disapproval of the Chief of the Bureau; or (d) in the absence of the aforesaid standards in accordance with any standards approved by the Chief of the Bureau.*† [Reg. 8, sec. 2]

110.70 Statement of kind, grade, condition. Whenever the kind, grade, or other class or condition of canned foods is stated for the purposes of this Act and the regulations in this part, the terms used shall be correctly applied and shall be selected as not to convey a false impression of the canned foods. In case of doubt as to the kind, grade, or condition of a given lot of canned foods, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of canned foods offered for storage.*† [Reg. 8, sec. 3]

APPEAL OF GRADES

110.71 Procedure. (a) If a question arises as to whether the kind, grade, or condition of the canned foods was correctly stated in

a receipt or grade certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the canned foods involved may, after reasonable notice to the other party, submit the question to the Chief of the Bureau, who may appoint a committee to make a determination. The decision of the committee shall be final, unless the Chief shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and to the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and be canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of kind, grade, or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Chief of the Bureau or his representative shall decide that the expense should be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

110.72 Bonds required. Every person applying for a license or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part except § 110.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of canned foods and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 110.11, 110.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person with respect to the acceptance of the custody of canned foods and their storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses or amendments thereto. In fixing the amount of such bond consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

110.73 Publications. Publications under the Act and the regulations in this part shall be made in such media as the Chief of the Bureau may from time to time designate.*† [Reg. 10, sec. 2]

110.74 Information of violations. Every person licensed under the Act shall immediately furnish the Bureau any information which comes to the knowledge of such persons tending to show that any

*†For statutory and source citations, see note to § 110.1.

provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

110.75 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except § 110.71, the licensee involved shall be allowed a reasonable time, fixed by the Secretary, or his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary, or his designated representative. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary, or his designated representative. Every written entry in the records of the Department made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

110.76 One document and one license to cover several products. A license may be issued for the storage of two or more agricultural products in a single warehouse or in one or more compartments in the same warehouse. Where such a license is desired, a single application, inspection, bond, record, report, or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.*† [Reg. 10, sec. 5]

110.77 Combination warehouse; bond; assets. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees applicable to the particular compartment or compartments to be licensed.*† [Reg. 10, sec. 6]

110.78 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 7]

PART 111—COTTONSEED WAREHOUSES

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CROSS REFERENCE

Cottonseed sold or offered for sale for crushing purposes (inspection, sampling, and certification) : See Part 61.

DEFINITIONS

Section 111.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 111.1 to 111.86, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 111.1 to 111.86, inclusive, (except for the amendments noted in the text,) is Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as amended, Sept. 1926. (SRA, BAE 102)

111.2 Terms defined. For the purpose of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(b) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) **Secretary.** The Secretary of Agriculture of the United States.

(d) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(e) **Regulations.** Rules and regulation made under the Act by the Secretary.

(f) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(g) **Warehouse.** Any building, structure, or other protected inclosure in which cottonseed is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which cottonseed is or may be stored.

(h) **Warehouseman.** Any person lawfully engaged in the business of storing cottonseed.

(i) **Cottonseed.** Prime cottonseed, cool, clean and not containing in excess of 1 percent foreign matter nor in excess of 10 percent moisture; sound and not containing in excess of 6 percent damaged or immature seed, and shall be untreated by chemical processes: Provided, That if the warehouse is equipped with such cooling and conditioning equipment as may be acceptable to the Department, or if the cottonseed is in sacks containing not more than 100 pounds to the sack and stored in such manner as the Chief of the Bureau, or his

representative, may approve, the cottonseed may have a moisture content not in excess of 12 percent.

(j) **License.** A license issued under the Act by the Secretary.

(k) **Licensed warehouse.** A warehouse for the conduct of which a license has been issued.

(l) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(m) **Licensed grader.** A person licensed under the Act by the Secretary to grade and to certificate the grade or other class of cottonseed stored or to be stored in a licensed warehouse.

(n) **Licensed weigher.** A person licensed under the Act by the Secretary to weigh and certificate the weight of cottonseed stored or to be stored in a licensed warehouse.

(o) **Licensed inspector.** A person licensed under the Act by the Secretary to inspect, to sample, and to certificate the condition for storage of cottonseed.

(p) **Receipt.** A warehouse receipt.

(q) **Bag.** A sack or other package.

(r) **State.** A State, Territory, or District of the United States.*
[Reg. 1, sec. 2, SRA, BAE 102, as amended July 14, 1931]

WAREHOUSE LICENSES

111.3 Application form. Applications for licenses under sections 4 and 9 of the Act (46 Stat. 1463, 1464; 7 U.S.C. 244, 248) and for modifications or extensions of licenses under section 5 of the Act (42 Stat. 1282; 7 U.S.C. 245) shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application by the Secretary.*† [Reg. 2, sec. 1]

111.4 Issuance of license; conditions. (a) A license for the conduct of a warehouse shall not be issued if it be found by the Secretary that the warehouse is not suitable for the proper storage of cottonseed, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.

(b) A building acceptable for storage of cottonseed shall be of sound construction, with sound floors, and, if the seed is not stored in accordance with either paragraphs (e), (f), or (g) of this section, it shall be separated into bins or compartments.

(c) An extra licensed bin or compartment shall be maintained at all times with a storage capacity equal to the greatest number of tons that can be stored in any one bin or compartment, except as otherwise provided in paragraphs (e), (f), and (g) of this section. No cottonseed shall be stored in this extra bin or compartment except when necessary to move seed from another bin or compartment to prevent the seed from going out of condition.

*†For statutory and source citations, see note to § 111.1.

(d) A conveying system must be provided throughout the entire warehouse, passing through or accessible to each bin or compartment in such a way that the cottonseed can be moved rapidly when deemed necessary to maintain it in proper condition.

(e) A system of air cooling may be installed in the warehouse. If, in the discretion of the Chief of the Bureau or his representative, it shall be determined that a warehouse equipped with a cooling system does not need bins, it shall not be necessary to construct bins in such warehouse.

(f) If tanks are used for the storage of cottonseed both a conveying system and an approved air cooling system must be installed and maintained in good working order.

(g) If cottonseed is stored in bags no special type of building is required other than one of sound construction, and with sound floors and of such character as to keep the cottonseed dry. No system of conveying or air cooling is required in bag storage.* [Reg. 2, sec. 2, SRA, BAE 102, Aug. 24, 1926, as amended July 11, 1929]

111.5 Net assets required. The warehouseman conducting a warehouse licensed, or for which application for license has been made under the Act, shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$5 per ton of the maximum number of tons that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000, and need not be more than \$100,000. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 111.13 (b).*† [Reg. 2, sec. 3]

111.6 Modification or extension of license. Each application for a modification or extension of a license under section 5 of the Act (42 Stat. 1282; 7 U.S.C. 245) shall be made to the Secretary, upon a form prescribed for the purpose and furnished by the Chief of the Bureau, shall be in English, shall be signed by the applicant, and shall be filed with the Secretary not less than 30 days before the date of the termination of the license then in effect.*† [Reg. 2, sec. 4]

111.7 License shall be posted. Immediately upon receipt of his license or of any modification or extension thereof under the Act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 5]

111.8 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is suspended, revoked, or canceled for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 111.84.*† [Reg. 2, sec. 6]

111.9 Return of suspended or revoked warehouse license. In case a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, such license shall be immediately returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued and it shall be posted as prescribed in § 111.7: Provided, That in the discretion of the Chief of the Bureau a new license may be issued without reference to the suspension.*† [Reg. 2, sec. 7]

111.10 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman a duplicate thereof may be issued under the same or a new number at the discretion of the Secretary.*† [Reg. 2, sec. 8]

111.11 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.*† [Reg. 2, sec. 9]

*†For statutory and source citations, see note to § 111.1.

WAREHOUSE BONDS

111.12 Time of filing. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 111.13, he shall file such bond within a time, if any, specified by the Secretary, said bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

111.13 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of \$5 per ton or fractional part thereof of the maximum number of tons that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required, under §§ 111.12–111.16, but the maximum amount of the bond shall be raised to \$100,000.

(b) In case of a deficiency in net assets under § 111.5, there shall be added to the amount of the bond, fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) In case the Secretary finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

111.14 Extension bond. In case an application is made under § 111.3 for a modification or an extension of a license and no bond previously filed by the warehouseman under §§ 111.12–111.16 covers obligations arising during the period of such modification or extension, the warehouseman shall, when notice has been given by the Secretary that his application for such modification or extension will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part, may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

111.15 New bond required each year. Whenever a continuous form of license has been issued such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 111.14.*† [Reg. 3, sec. 4]

111.16 Approval of bond. No bond, amendment, or continuation thereof shall be accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

111.17 Form. (a) Every receipt, whether negotiable or nonnegotiable, issued for cottonseed stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260) embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws; (4) the tag number given to each bag or lot of cottonseed in accordance with § 111.36; (5) a statement, conspicuously placed, whether or not the cottonseed is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or flood; (6) a blank space designated for the purpose in which the condition of the cottonseed shall be stated; (7) the moisture content of the cottonseed at the time of storage; (8) the bin or compartment number in which the cottonseed is stored, if stored in bulk; (9) the words "Not negotiable", or "Negotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; and (10) a statement indicating the amount of shrinkage agreed upon between the depositor and the warehouseman.

(b) Every receipt, whether negotiable, or nonnegotiable, issued for cottonseed stored in a licensed warehouse shall specify a period, for which the cottonseed is accepted for storage under the Act and the regulations in this part not to extend beyond July 1 following the year in which harvested. Upon demand and the surrender of the old receipt by the lawful holder thereof on or before July 1, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of cottonseed in the warehouse, if he then continues to act as a licensed warehouseman, may either extend the old receipt by making a proper notation thereon or issue a new receipt for a further specified period not exceeding three months. Provided That receipts covering seed stored in sacks as specified in § 111.2 (i) may be extended or new receipts issued for a further period not extending beyond June 30 following the second crop year in which the seeds were harvested, and provided it is actually determined in either case that the quality of the cottonseed has not been impaired, but in no event shall cottonseed of two different crop years be stored in the same bin, lot, or compartment. If receipts are extended by endorsements, such endorsement shall be made across the face of the receipt, shall be signed and dated by the licensed warehouseman as of the date of the extension, and shall read as follows: "This receipt extended in accordance with the Act and regulations not to extend beyond -----."

(c) The grade stated in a receipt issued for cottonseed, stored in a licensed warehouse, shall be stated in such receipt as determined

*†For statutory and source citations, see note to § 111.1.

by the licensed grader who last graded the cottonseed before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) That the cottonseed was inspected by a licensed inspector, graded by a licensed grader, and weighed by a licensed weigher; (2) a form of indorsement which may be used by the depositor or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the cottonseed covered by the receipt.

(d) Whenever the grade or other class of the cottonseed is stated in a receipt issued for cottonseed stored in a licensed warehouse, such grade or other class shall be stated in the receipt in accordance with §§ 111.77–111.79.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), such receipt shall have clearly and conspicuously stamped or written on the face thereof the words “Not graded on request of depositor.”

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.* [Reg. 4, sec. 1, SRA, BAE 102, Aug. 24, 1926, as amended July 14, 1931]

111.18 Copies of receipts. Either actual copies or skeleton copies of all receipts shall be made, and all such copies, except those issued in lieu of the original, in case of lost or destroyed receipts, shall, if there be no statute of the United States or law of a State providing otherwise, have clearly and conspicuously printed or stamped thereon the words “Copy—Not Negotiable.”*† [Reg. 4, sec. 2]

111.19 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the licensed warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the cottonseed represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the

warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, to the extent of double the amount of the bond.*† [Reg. 4, sec. 3]

111.20 Approval of form of receipt. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Chief of the Bureau, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

111.21 Partial delivery of cottonseed. (a) If a warehouseman is requested to deliver a part only of cottonseed stored in one bin or compartment for which he has issued negotiable receipts under the Act, and such delivery is made in such a manner that no accurate record of the weight of the portion delivered can be ascertained, he shall take up and cancel all receipts covering the entire contents of the bin or compartment before making such partial delivery and no receipt shall be issued for the undelivered portion until the weight of such undelivered seed has been determined.

(b) If a warehouseman is requested to deliver a part only of a lot of cottonseed for which he has issued a negotiable receipt under the Act, and he can by actual accurate weight ascertain the amount to be delivered, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the cottonseed. The new receipt shall show the date of issuance and also indicate the number and date of the old receipt.*† [Reg. 4, sec. 5]

111.22 Return of receipts before delivery of cottonseed. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cottonseed for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver cottonseed for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written acknowledgment thereof.*† [Reg. 4, sec. 6]

111.23 Authority for delivery of cottonseed on nonnegotiable receipt. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of cottonseed covered by such receipt, together with the bona fide genuine signature of such person or persons. No licensed warehouseman shall honor an order for the release of cottonseed covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 7]

111.24 Receipts for storage; one bin; several bins. Any number of receipts may be issued for cottonseed in any one bin or com-

*†For statutory and source citations, see note to § 111.1.

partment but a receipt shall not be issued for a lot of seed, a part of which is stored in one bin or compartment and a part in another bin or compartment.*† [Reg. 4, sec. 8]

111.25 Omission of grade; no compulsion by warehouseman. No licensed warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any cottonseed stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 9]

DUTIES OF LICENSED WAREHOUSEMAN

111.26 Cottonseed must be inspected. No licensed warehouseman shall receive into his licensed warehouse for storage cottonseed other than as defined in § 111.2 (i). Neither shall he receive such seed for storage until it has been inspected by an inspector licensed under this Act and found by him to be in proper condition and suitable for storage.* [Reg. 5, sec. 1, SRA, BAE 102, as amended Sept. 2, 1927]

111.27 Insurance requirements. (a) Each licensed warehouseman when so requested in writing as to any cottonseed by the depositor thereof or lawful holder of the receipt covering such cottonseed shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such cottonseed while in his custody as a licensed warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested against loss or damage by fire, lightning, tornado, or flood. When insurance is not carried in the warehouseman's name the receipts shall show that the cottonseed is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all cottonseed stored in his warehouse.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 111.7 and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice stating briefly the conditions under which the cottonseed will be insured against loss or damage by fire, lightning, tornado, or flood.*† [Reg. 5, sec. 2]

111.28 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of this part, pay such premium, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

111.29 Insurance; collection and payment. Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of this part, and shall, as soon as collected, promptly pay over to the persons concerned, any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 4]

111.30 Shrinkage; agreement. At the time cottonseed is received for storage the warehouseman and the depositor shall agree upon an amount to be allowed for shrinkage while the cottonseed is in storage, such shrinkage to include loss caused by natural drying out of the cottonseed, but in no event shall the total amount of shrinkage exceed 5 percent of the weight of the cottonseed at the time it entered storage. In case no agreement as to shrinkage has been made, the difference in the moisture content of the cottonseed at the beginning of the storage period and at the time of delivery shall form a basis for calculating shrinkage.*† [Reg. 5, sec. 5]

111.31 Care of cottonseed in storage. Each warehouseman shall at all times exercise such care in regard to cottonseed in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. He shall also equip his warehouse with thermometers to determine the temperature of the cottonseed while in storage and shall make readings of the thermometers with such frequency as the Chief of Bureau or his representatives may direct, and permanently record the same, but in no event shall such readings be made less frequently than every third working day. If the cottonseed attains a temperature of 110° F. the warehouseman shall immediately take such action as is necessary to lower the temperature. If the depositor of the cottonseed or any other person to whom he may have transferred title or interest in the cottonseed desires to make temperature determinations he shall be permitted to do so in company with the warehouseman or the warehouseman's representative.*† [Reg. 5, sec. 6]

111.32 Care of nonlicensed cottonseed, or other commodities. If, at any time, a warehouseman shall handle or store cottonseed otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the cottonseed in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part.*† [Reg. 5, sec. 7]

111.33 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of receipts issued and canceled receipts, except that with the written consent of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers

*†For statutory and source citations, see note to § 111.1.

in some other place of safety, approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancellation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 8]

111.34 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the Chief of the Bureau a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Chief of the Bureau a statement in writing showing the proposed change and the reasons therefor. Each licensed warehouseman shall keep exposed conspicuously in the place prescribed by § 111.7, and at such other place, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 9]

111.35 Business hours. (a) Each licensed warehouse shall be kept open for the purpose of receiving cottonseed for storage and delivering cottonseed out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver cottonseed stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.*† [Reg. 5, sec. 10]

111.36 Numbered tags to be attached to cottonseed. Each warehouseman shall, upon acceptance for storage of any lot of sacked cottonseed, immediately attach to such lot a tag of good quality which shall identify the lot. Such tag shall show the lot number, the identification mark on each bag, the number of the receipt issued to cover such cottonseed, the number of sacks in the lot, the grade, if determined, and the gross weight of the cottonseed at the time it entered storage.* [Reg. 5, sec. 11, SRA, BAE 102, as amended July 14, 1931]

111.37 Identification tag. Each warehouseman shall so store each lot of cottonseed for which a receipt under the Act has been issued that the tag thereon, required by § 111.36, is visible and readily accessible, and shall arrange all bags in his licensed warehouse so as to permit an accurate count thereof.*† [Reg. 5, sec. 12]

111.38 Grade and weight determinations. Each licensed warehouseman shall accept all cottonseed for storage and shall deliver out of storage all bulk cottonseed, other than specially binned or sacked cottonseed, in accordance with the grade of such cottonseed as determined by a person duly licensed to grade such cottonseed and to certificate the grade thereof, and in accordance with the weights of such cottonseed as determined by a person duly licensed to weigh such cottonseed and to certificate the weight thereof, under the Act and the regulations in this part, and in accordance with the agreement regarding shrinkage as shown by the terms of the receipt or in the absence of such agreement in accordance with § 111.30.*† [Reg. 5, sec. 13]

111.39 Bulk storage of identity-preserved cottonseed. Upon the acceptance by a licensed warehouseman, for storage in his licensed warehouse, of any lot of bulk cottonseed the identity of which is to be preserved, he shall store, or cause to be stored, such cottonseed in an individual bin or compartment designated by lot numbers or letters, or other clearly distinguishable words or signs, permanently and securely affixed thereto, or shall so mark the container or containers of such cottonseed or so place the cottonseed in the warehouse that its identity will not be lost during the storage period.*† [Reg. 5, sec 14]

111.40 Delivery of cottonseed; conditions. Except as may be provided by law or the regulations in this part, each licensed warehouseman, (a) upon proper presentation of a receipt for any bulk, other than specially binned cottonseed, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt cottonseed of the grade and quantity specified in such receipt, after making due allowance for shrinkage as provided in the regulations in this part, and (b) upon proper presentation of a receipt for any cottonseed the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical cottonseed stored in his licensed warehouse.*† [Reg. 5, sec. 15]

111.41 System of accounts. Each licensed warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, which shall show for each bag or lot of cottonseed, the name of the depositor, the weight of the cottonseed, the number of bags in each lot, the grade when grade is required to be, or is ascertained, the location, the dates received for and delivered out of storage and the receipts issued and canceled, and a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case of cottonseed stored in bags, the tag number mentioned in § 111.36 shall be shown. There shall also be kept a record or chart for each bin, showing the temperature of cottonseed in storage as determined by the readings required by § 111.31, and such other information as the Chief of the Bureau may require.*† [Reg. 5, sec. 16]

*†For statutory and source citations, see note to § 111.1.

111.42 Reports. Each licensed warehouseman shall, from time to time, when requested by the Chief of the Bureau, make such reports, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse as the Chief of the Bureau may require.*† [Reg. 5, sec. 17]

111.43 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as the Bureau may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 18]

111.44 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Chief of the Bureau for each kind of report, an exact copy of each such report submitted by such warehouseman under §§ 111.42, 111.55.*† [Reg. 5, sec. 19]

111.45 Inspection and examination of warehouse. Each licensed warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 20]

111.46 Weighing apparatus; inspection. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for cottonseed stored in a licensed warehouse, shall be subject to examination by the officer or agent of the Department of Agriculture designated by the Chief of Bureau for the purpose. If the Bureau shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any cottonseed for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 21]

111.47 Warehouse to be kept clean. Each licensed warehouseman shall keep his warehouse clean and free from trash, dust, rubbish, and scattered cottonseed.*† [Reg. 5, sec. 22]

111.48 Excess storage. A warehouseman shall not store cottonseed in his licensed warehouse in excess of the capacity thereof determined in accordance with § 111.13 (a).*† [Reg. 5, sec. 23]

111.49 Removal from storage. Except as may be permitted by law or the regulations in this part, a licensed warehouseman shall not remove any cottonseed for storage from the licensed warehouse or the part thereof designated in the receipt, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no circumstances, unless it becomes abso-

lutely necessary to protect the interests of holders of receipts, shall cottonseed be removed from the licensed warehouse, and immediately upon any such removal the warehouseman shall notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 24]

111.50 Storage of wet cottonseed prohibited. A warehouseman shall not under any circumstances accept for storage any cottonseed in his licensed warehouse that is wet or otherwise of a condition rendering it unsuitable for storage.*† [Reg. 5, sec. 25]

111.51 Storage to prevent damage. A warehouseman shall not handle or store cottonseed in such manner as will injure or damage it or in any part of the warehouse in which it is likely to be injured or damaged by excessive moisture, or otherwise. If a licensed warehouseman accepts cottonseed for storage in bulk, unless his warehouse is equipped with both a conveyor and a cooling system, he shall not store such seed in an amount greater than 500 tons in any one bin or compartment.*† [Reg. 5, sec. 26]

111.52 Deteriorating cottonseed; handling; notice. (a) If the licensed warehouseman, with the approval of the licensed inspector, shall determine that any cottonseed is deteriorating and that such deterioration cannot be stopped, the licensed warehouseman shall give immediate notice of the fact, in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the warehouse in which the cottonseed is stored; (2) the quantity, kind, and grade of the cottonseed at the time the notice is given; (3) the actual condition of the cottonseed as nearly as can be ascertained, and the reason, if known, for such condition; (4) the oldest outstanding receipts covering the amount of cottonseed out of condition, giving the number and date of each such receipt and the quantity, the kind, and grade of the cottonseed as stated in each such receipt; and (5) that such cottonseed will be delivered upon the return and cancelation of the receipt therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts, if known to the licensed warehouseman; (2) to the person who originally deposited the cottonseed; (3) to any other persons known by the licensed warehouseman to be interested in the cottonseed; and (4) to the Chief of the Bureau. If the holders of the receipts and the owners of the cottonseed are known to the licensed warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the licensed warehouseman shall, whether or not requested to do so, also immediately notify such persons by telegraph or telephone at their expense.

Public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license.

(d) Any person, interested in any cottonseed or the receipt covering such cottonseed stored in a licensed warehouse, may, in writing, notify the licensed warehouseman, conducting such licensed warehouse, of the fact of his interest, and such licensed warehouseman

*†For statutory and source citations, see note to § 111.1.

shall keep a record of the fact. If such person requests in writing that he be notified regarding the condition of any such cottonseed and agrees to pay the cost of any telegraph or telephone charge, such licensed warehouseman shall notify such person in accordance with such request.

(e) Nothing contained in this section shall be construed as relieving the licensed warehouseman from properly caring for any cottonseed after notification of its condition in accordance with this section.*† [Reg. 5, sec. 27]

111.53 Sale of deteriorating cottonseed. Subject to State law, if the cottonseed advertised in accordance with the requirements of § 111.52 has not been removed from storage by the owner thereof within five days from the date of notice of its being out of condition, the licensed warehouseman in whose licensed warehouse such cottonseed is stored may immediately sell the same at public auction at the expense and for the account of the owner. Before such public sale is determined upon, the warehouseman shall immediately notify the Chief of the Bureau by wire.*† [Reg. 5, sec. 28]

111.54 Compliance with State laws and contracts. Each warehouseman shall faithfully perform his obligation as a warehouseman under the laws of the State in which he is conducting his licensed warehouse and such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of cottonseed in such warehouse.*† [Reg. 5, sec. 29]

111.55 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Chief of the Bureau or his representative the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 30]

111.56 Grade or weight certificate; filing. When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cottonseed covered by such certificate is stored, and such certificate shall become a part of the records of the licensed warehouseman.*† [Reg. 5, sec. 31]

111.57 Identity-preserved cottonseed; nonstorage. Subject to the provisions of section 13 of the Act (39 Stat. 488; 7 U.S.C. 254), a licensed warehouseman may elect not to receive cottonseed for storage the identity of which is to be preserved while in storage.*† [Reg. 5, sec. 32]

FEES

111.58 Warehouse license fees. There shall be collected, charged, and assessed a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to an inspector, weigher, or grader.* [Reg. 6, sec. 1, SRA, BAE 102, as amended July 14, 1931]

111.59 Warehouse inspection fees. There shall be collected, charged, and assessed for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of \$10 for each 1,000 tons of the storage capacity, or fraction thereof, of the warehouse, determined in accordance with § 111.13, but in no case less than \$10 nor more than \$200, and for each re-examination or re-inspection applied for by such warehouseman, a fee based on the extent of the re-examination or reinspection, proportioned to, but not greater than, that prescribed for the original examination or inspection.* [Reg. 6, sec. 2, SRA, BAE 102, as amended July 14, 1931]

111.60 Advance deposit. Before any warehouseman's license or amendment thereto, or any inspector's, weigher's, or grader's license is granted, or an original examination or inspection or re-examination or reinspection applied for by a warehouseman, is made pursuant to the regulations in this part, the warehouseman, and/or inspector, weigher, or grader shall deposit with the Bureau the amount of fee prescribed therefor. Such deposit shall be in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."* [Reg. 6, sec. 3, SRA, BAE 102, as amended July 14, 1931]

111.61 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 111.60 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS, LICENSED GRADERS, AND LICENSED WEIGHERS

111.62 Inspector's, grader's, weigher's application. (a) Application for licenses to inspect, to grade, or to weigh cottonseed under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) satisfactory evidence that he has passed his twenty-first birthday; (2) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act in which cottonseed sought to be inspected, graded, and weighed under such license is or may be stored; (3) a statement from the warehouseman conducting such warehouse showing whether or not the applicant is competent and is acceptable to such warehouseman for the purpose; (4) satisfactory evidence that he has had at least one

*†For statutory and source citations, see note to § 111.1.

year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient; (5) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him; and (6) such other information as the Chief of the Bureau may deem necessary, Provided, That when an application for a license to grade cottonseed is filed by a person who does not intend to grade cottonseed for any particular licensed warehouseman but who does intend to grade cottonseed stored or to be stored in a licensed warehouse and to issue grade certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such cottonseed, it shall not be necessary to furnish such statement as is required by (3) of this paragraph.

(c) The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application by the Secretary.

(d) A single application may be made by any person for a license to inspect, to grade, and to weigh upon complying with all the requirements of this section.*† [Reg. 7, sec. 1]

111.63 Examination of applicant. Each applicant for a license as an inspector, a grader, or a weigher, and each licensed inspector, licensed grader, or licensed weigher shall, whenever requested by an authorized agent of the Department of Agriculture designated by the Chief of the Bureau for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.*† [Reg. 7, sec. 2]

111.64 Posting of license. Each licensed grader shall keep his license conspicuously posted in the office where all or most of the grading is done and each licensed inspector or weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Chief of the Bureau.*† [Reg. 7, sec. 3]

111.65 Duties of licensees. Each licensed inspector, each licensed grader, and each licensed weigher when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms inspect, grade, or weigh and certificate the condition for storage, grade, or weight of cottonseed stored or to be stored in a licensed warehouse for which he holds a license, if such cottonseed be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such inspector, grader, or weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection, grade, or weight certificate shall be issued under the Act for cottonseed not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

111.66 Inspection certificate; form. Each inspection certificate issued under the Act by a licensed inspector shall be in a form ap-

proved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Cottonseed Inspection Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cottonseed is or is to be stored; (d) the date of the certificate; (e) the location of the cottonseed at the time of inspection; (f) the identification number or mark of each bag of cottonseed, if in bags, given in accordance with § 111.36; (g) the condition of the cottonseed for storage at the time of inspection; (h) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder; (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the cottonseed; (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 5]

111.67 Grade certificate; form. Each grade certificate issued under the Act by a licensed grader shall be in a form approved for the purpose by the Chief of the Bureau and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Cottonseed Grade Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cottonseed is or is to be stored; (d) the date of the certificate; (e) the location of the cottonseed at the time of grading; (f) the identification number or mark of each bag of cottonseed, if in bags, given in accordance with § 111.36; (g) the grade or other class of each bag or lot of cottonseed covered by the certificate, in accordance with §§ 111.77–111.79 as far as applicable, and the standard or description in accordance with which the grade is made; (h) the approximate amount of cottonseed covered by the certificate; (i) that the certificate is issued by a licensed grader under the United States Warehouse Act and regulations thereunder; and (j) the signature of the licensed grader. In addition, the grade certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

111.68 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the Chief of the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Cottonseed Weight Certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cottonseed is or is to be stored; (d) the date of the certificate; (e) the location of the cottonseed at the time of weighing; (f) the identification number or mark of each bag of cottonseed, if in bags, given in accordance with § 111.36; (g) the gross weight of the cottonseed; (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder; and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not

*†For statutory and source citations, see note to § 111.1.

inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 7]

111.69 Combination certificate; form. The condition, grade, and weight of any cottonseed, ascertained by a licensed inspector, a licensed grader, and a licensed weigher may be stated on a certificate meeting the combined requirements of §§ 111.66–111.68, if the form of such certificate shall have been approved for the purpose by the Chief of the Bureau.*† [Reg. 7, sec. 8]

111.70 Copies of certificates to be kept. Each licensed inspector, each licensed grader, and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the cottonseed covered by the certificate is stored.*† [Reg. 7, sec. 9]

111.71 Licensees to permit and assist in examination. Each licensed inspector, each licensed grader, and each licensed weigher shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the licensed warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 111.41, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector, licensed grader, or licensed weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 10]

111.72 Reports. Each licensed inspector, each licensed grader, and each licensed weigher shall, from time to time, when requested by the Chief of the Bureau, make reports on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed inspector, licensed grader, or licensed weigher.*† [Reg. 7, sec. 11]

111.73 Licenses; suspension; revocation. Pending investigation the Secretary may, whenever he deems necessary, suspend the license of a licensed inspector, licensed grader, or licensed weigher temporarily, without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the licensed inspector, licensed grader, or licensed weigher, the Secretary may, without hearing, suspend or cancel the license issued to such licensed inspector, licensed grader, or licensed weigher. The Secretary may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a licensed inspector, licensed grader, or licensed weigher when such licensee, (a) has ceased to perform services as such inspector, grader, or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such licensed inspector, licensed grader, or licensed weigher. As soon as it shall come to the attention of a licensed warehouseman that either of the conditions mentioned under (a) and (b) exist, it shall be the duty of such warehouseman

to notify in writing the Chief of the Bureau. Before the license of any licensed inspector, licensed grader, or licensed weigher is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensed inspector, licensed grader, or licensed weigher shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 111.84.*† [Reg. 7, sec. 12]

111.74 Suspended or revoked license; return; termination of license. (a) In a case a license issued to a licensed inspector, licensed grader, or licensed weigher is suspended, revoked, or canceled by the Secretary, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed inspector, licensed grader, or licensed weigher to whom it was originally issued, and it shall be posted as prescribed in § 111.64.

(b) Any license issued under the Act and the regulations in this part to an inspector, a grader, or a weigher shall automatically terminate as to any licensed warehouse whenever the license of such warehouse shall be revoked or canceled. Thereupon the license of such inspector, grader, or weigher shall be returned to the Secretary. In case such license shall apply to other warehouses the Secretary shall issue him a new license, omitting the names of the warehouses covering which licenses have been revoked or canceled. Such new license shall be posted as prescribed in § 111.64.*† [Reg. 7, sec. 13]

111.75 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to a licensed inspector, licensed grader, or licensed weigher, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.*† [Reg. 7, sec. 14]

111.76 Unlicensed inspectors, graders, weighers; misrepresentation. No person shall in any way represent himself to be an inspector, grader, or weigher licensed under the Act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the Act.*† [Reg. 7, sec. 15]

COTTONSEED GRADING

111.77 Classification; statement. Whenever the grade or condition of cottonseed is required to be or is stated for the purposes of this Act and the regulations in this part, it shall be stated in accordance with §§ 111.77–111.79.*† [Reg. 8, sec. 1]

111.78 Standards to be used. Until such time as official cottonseed grades of the United States are in effect, the grade and condition of cottonseed shall be stated as far as applicable (a) in accordance with the State standards, if any, established in the State in which the warehouse is located, (b) in the absence of any State standards, in

*†For statutory and source citations, see note to § 111.1.

accordance with the standards, if any, adopted by any cottonseed organization or by the cottonseed trade generally in the locality in which the warehouse is located, subject to the disapproval of the Chief of the Bureau, or (c) in the absence of the aforesaid standards in accordance with any standards approved by the Chief of the Bureau.*† [Reg. 8, sec. 2]

111.79 Statement of grade; condition. Whenever the grade or condition of the cottonseed is stated for the purposes of this Act and this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the cottonseed. In case of doubt as to the grade or condition of a given lot of cottonseed a determination shall be made of such facts by drawing at least six samples of five (5) pounds each, fairly representative of the contents of the car, or two samples of two (2) pounds each fairly representative of the contents of the wagon from the various parts of the carload or wagonload of cottonseed offered for storage. These samples shall be thoroughly mixed and after being so mixed, from this mixture by quartering, not less than 100 grams shall be taken, which shall constitute the sample for the purpose of determining the grade.*† [Reg. 8, sec. 3]

ARBITRATION

111.80 Arbitration. (a) Except when agreements have been made in accordance with the "United States Arbitration Act" (43 Stat. 883; 9 U.S.C. 1-15), in case a question arises as to whether the condition, grade, or weight of cottonseed was correctly stated in a receipt, inspection, certificate, grade certificate, or weight certificate issued under the Act and the regulations in this part or as to whether an official sample was properly drawn by a licensed inspector in accordance with the regulations in this part, the licensed warehouseman concerned or any person financially interested in the cottonseed involved may, after reasonable notice to the other interested party, submit the question to an arbitration committee for determination in accordance with this section.

(b) Such arbitration committee shall be composed of three or more disinterested persons who are competent to pass upon the questions involved. If there be a local trade organization such as a board of trade, chamber of commerce, exchange, or inspection department which provides such a committee under a rule or practice acceptable to the Chief of the Bureau for the purpose, such a committee may determine the question. In the absence of such a committee, or if for any good reason not inconsistent with the Act and the regulations in this part such committee is not acceptable to either of the parties interested the complainant and the other party shall each name a member and the two members so named shall select a third member, who shall constitute the arbitration committee. Each member of any such committee shall at all times be subject, for good cause, to the disapproval of the Chief of the Bureau, and in case any member is so disapproved he shall not thereafter act on an arbitration committee which is considering any questions relating to the same lot of cottonseed unless such disapproval be withdrawn.

(c) It shall be the duty of the interested parties to acquaint the arbitration committee with the exact nature of the question to be determined and all the necessary facts and to permit the committee to examine the receipt, certificate, sample, or cottonseed involved or any papers or records needed for the determination of the question. The committee shall make a written finding setting forth the question involved, the necessary facts, and its determination. Such findings or a true copy thereof, shall be filed as a part of the records of the licensed warehouseman involved. It may dismiss the matter without determination upon the request of the complainant, or for noncompliance by the complainant with the law or the regulations in this part, or because it is without sufficient evidence to determine the question, in which case the decision shall be deemed to be against the complainant. Except as otherwise provided by law, its decision shall be final for the purposes of the Act and the regulations in this part, unless the Chief of the Bureau shall direct a review of the question. Any necessary and reasonable expense of such arbitration shall be borne by the losing party, unless the committee shall decide that such expense shall be prorated between the parties.

(d) If the decision of the arbitration committee be that the grade, condition, or weight was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it and he shall substitute therefor one conforming to the decision of the committee. If the decision of the committee be that a sample was not properly drawn in accordance with the regulations in this part, it shall cease to be an official sample for the purposes of regulations in this part, and the licensed inspector, at the request of any of the parties of the arbitration, shall draw and substitute a new sample, complying with this part with respect to such sample.*† [Reg. 9, sec. 1]

MISCELLANEOUS

111.81 Bonds required. Every person applying for a license, or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part, except § 111.5, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of cottonseed and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 111.12, 111.13, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form, and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of cottonseed and its storage in the warehouse in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or

*†For statutory and source citations, see note to § 111.1.

contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

111.82 Publications. Publications under the Act and this part shall be made in service and regulatory announcements of the Bureau of Agricultural Economics, and such other media as the Chief of that Bureau may from time to time designate for the purpose.*† [Reg. 10, sec. 2]

111.83 Information of violations. Every person licensed under the Act shall immediately furnish the Chief of the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

111.84 Procedure in hearings. -For the purpose of a hearing under the Act and the regulations in this part, except § 111.80, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by any official of the Department of Agriculture designated by him for the purpose, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary or an official of the Department of Agriculture designated by him for the purpose. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or an official of the Department of Agriculture authorized by the Secretary. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department of Agriculture. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

111.85 State-Federal laws; no conflict. Nothing in the regulations in this part shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, inspectors, graders, or weighers, nor shall the regulations in this part be construed so as to limit the operation of any statute of the United

States relating to warehouses, warehousemen, inspectors, graders, or weighers now in force in the District of Columbia, or in any Territory, or other place under the exclusive jurisdiction of the United States.*† [Reg. 10, sec. 5]

111.86 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 6]

PART 112—COLD-PACK FRUIT WAREHOUSES

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*†For statutory and source citations, see note to § 111.1.

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DEFINITIONS

Section 112.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 112.1 to 112.77, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 112.1 to 112.77, inclusive, (except for the amendments noted in the text,) is Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as amended, Aug. 1928. (SRA, BAE 111)

112.2 Terms defined. For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) Cold-pack fruit. The clean, sound product obtained by packing under the following minimum specifications, in suitable containers, properly matured and prepared fresh fruit and berries, with or without the addition of sugar (sucrose), and by maintaining it at a temperature sufficiently low to insure its preservation:

(1) All containers shall be marked as of a certain variety and shall be true to name, for example: Straight or 2 plus 1 Cuthbert raspberries or Marshall strawberries; provided a tolerance of 5 percent for other varieties may be allowed.

(2) All barrels shall be new, shall have six hoops, shall be properly paraffin lined, and shall be made of fir or other suitable wood.

(3) All cans used for containers and storing of berries shall be enamel lined.

(4) Packing plants shall be kept in a clean and sanitary condition. Products packed in open fields, open sheds, or barns, or within too close proximity to any barn, cesspool, or refuse dump shall be denied eligibility for storage.

(5) Within 12 hours after packing, all berries and fruits to be stored under this act shall be in a sharp room having a temperature not in excess of zero and shall be held in such sharp room for at least 48 hours before being placed in regular cold storage rooms; Provided, That berries to which has been added not more than one-tenth of one percent of benzoate of soda by weight shall not be

placed in such sharp room but such berries shall be placed within 12 hours after packing in regular cold-storage rooms having a temperature not lower than 32° nor higher than 40° F.

(6) All barrels shall be filled approximately as follows: 2 plus 1—150 pounds sugar to 300 pounds fruit, making a total of 450 pounds. Straight berries, 375 pounds berries.

(7) Neither ice, nor water, nor sugar in solution shall be added.

(8) If berries are sugared, sugar and berries are to be weighed separately, and not to exceed 2 percent variation in sugar may be allowed.

(9) All berries or fruits, when dirty, shall be washed in clean water and drained before weighing.

(10) All containers must be coded to determine, when, where, and by whom they were packed.

(11) The weight mark on barrels is to be the in weight and the tare is to be the tare of containers before filling.

(b) The Act. The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(c) Person. An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) Secretary. The Secretary of Agriculture of the United States.

(e) Chief of the Bureau. The Chief of the Bureau of Agricultural Economics.

(f) Regulations. Rules and regulations made under the Act by the Secretary.

(g) Bureau. The Bureau of Agricultural Economics of the United States Department of Agriculture.

(h) Warehouse. Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which cold-pack fruit is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which cold-pack fruit is or may be stored, and for which a license has been issued under the Act.

(i) Warehouseman. Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing cold-pack fruit and holding a warehouse license.

(j) License. A license issued under the Act by the Secretary.

(k) Licensed warehouseman's bond. A bond required to be given under the Act by a licensed warehouseman.

(l) Licensed inspector. A person licensed under the Act by the Secretary to sample, to inspect, to grade, and to weigh and to certificate the grade, condition, and weight of cold-pack fruit for storage.

(m) Receipt. A licensed warehouse receipt issued under the Act, unless otherwise specified.* [Reg. 1, sec. 2, SRA, BAE 111, May 26, 1928, as amended May 29, 1930]

WAREHOUSE LICENSES

112.3 Application forms. Applications for licenses and for modifications or extensions of licenses under the Act shall be made to

*For statutory citation, see note to § 112.1.

the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application.*† [Reg. 2, sec. 1]

112.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary that the warehouse is not suitable for the proper storage of cold-pack fruit, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.*† [Reg. 2, sec. 2]

112.5 Net assets required. The warehouseman conducting a warehouse licensed or for which application for license has been made under the Act shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$5 for each 1,000 pounds, or fraction thereof, of the maximum number of pounds of cold-pack fruit that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, Provided That the amount of such assets shall not be less than \$5,000 and need not be more than \$100,000.

If such warehouseman has applied for licenses to conduct two or more warehouses in the same State the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 112.12 (b).*† [Reg. 2, sec. 3]

112.6 License shall be posted. Immediately upon receipt of his license or of any modification or extension thereof under the Act, the warehouseman shall post the same and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

112.7 Suspension or revocation of warehouse license. Pending investigation, the Secretary, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, cancel a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been

dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked or canceled for any violation of, or failure to comply with, any provision of the Act, or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary or his representative a written statement specifying the charges, and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 112.73.*† [Reg. 2, sec. 5]

112.8 Return of suspended or revoked warehouse license. When a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as required in § 112.6: Provided, That in the discretion of the Chief of the Bureau a new license may be issued without reference to such suspension.*† [Reg. 2, sec. 6]

112.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same or a new number at the discretion of the Secretary.*† [Reg. 2, sec. 7]

112.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

112.11 Time of filing bonds. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 112.12, he shall file such bond within a time, if any, specified by the Secretary, such bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

112.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of \$5 for each 1,000 pounds or fraction thereof, of the maximum number of pounds of cold-pack fruit that the warehouse will accommodate when stored in the manner customary

*†For statutory and source citations, see note to § 112.1.

to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 112.11–112.15. The amount of any bond covering more than one warehouse shall be determined on the same basis as for a single warehouse, but with the maximum amount raised to \$100,000.

(b) In case of a deficiency in net assets under § 112.5, there shall be added to the amount of the bond fixed in accordance with paragraph (a) of this section an amount equal to such deficiency.

(c) If the Secretary finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

112.13 Amendment to license. If application is made under § 112.3 for a modification or an extension of a license, and no bond previously filed by the warehouseman under §§ 112.11–112.15 covers obligations arising during the period of such modification or extension, the warehouseman shall, when notice has been given by the Secretary or his representative, that his application for such modification or extension will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

112.14 New bond required each year. Whenever a continuous form of license has been issued, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 112.13.*† [Reg. 3, sec. 4]

112.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

112.16 Form. (a) Every receipt, whether negotiable or nonnegotiable, issued for cold-pack fruit stored in a warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed

terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws; (4) the lot number given to each lot of cold-pack fruit, in accordance with § 112.32; (5) a statement conspicuously placed, whether or not the cold-pack fruit is insured, and if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado; (6) a blank space designated for the purpose in which the kind of cold-pack fruit shall be stated; (7) a blank space in which the packer's code or other identifying marks shall be stated; (8) a blank space in which the number, kind, and size of the containers, if barrels, but if in cans the number of cases and size of cans, shall be stated; (9) the words "Negotiable" or "Nonnegotiable"; (10) the condition in which the barrels or other containers were received for storage; (11) a blank space in which to designate the gross, tare, and net in weights; and (12) whether the receipt is an "original" or "copy" according to the nature of the receipt.

(b) Every receipt, whether negotiable or nonnegotiable, issued for cold-pack fruit, shall specify a period, not exceeding one year, for which the cold-pack fruit is accepted for storage under the Act and the regulations in this part; Provided, That receipts covering berries packed with benzoate of soda shall in no event be issued for a period beyond April 30 following the year in which packed. Upon demand and surrender of the old receipt by the lawful holder thereof, at or before the expiration of the period specified, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of cold-pack fruit in his warehouse, if he then continue to act as a licensed warehouseman, shall issue a new licensed receipt for a further specified period, not exceeding 6 months; provided it is actually determined by a licensed inspector that the cold-pack fruit has not deteriorated and that it is in proper condition for storage.

(c) The grade stated in a receipt issued for cold-pack fruit stored in a licensed warehouse shall be stated as determined by the licensed inspector who last inspected the cold-pack fruit before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) that the cold-pack fruit covered by the receipt was inspected, graded, and weighed by a licensed inspector, grader, and weigher; and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the cold-pack fruit covered by the receipt.

(d) Whenever the grade is stated on a receipt issued for cold-pack fruit stored in a licensed warehouse, such grade shall be stated in accordance with §§ 112.66–112.68.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.* [Reg. 4, sec. 1, SRA, BAE 111, May 26, 1928, as amended May 29, 1930]

112.17 Copies of receipts. Either actual copies or skeleton copies of all receipts shall be made, and all such copies, except those issued in lieu of the original, in case of lost or destroyed receipts, shall, if there be no statute of the United States or law of a State providing otherwise, have clearly and conspicuously printed or stamped thereon the words "Copy—Not negotiable."*† [Reg. 4, sec. 2]

112.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in amount double the value, at the time the bond is given, of the cold-pack fruit represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 3]

112.19 Approval of form of receipt. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Chief of the Bureau; (b) upon distinctive paper specified by him; (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing; and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

112.20 Partial delivery of cold-pack fruit. If a warehouseman deliver a part only of a lot of cold-pack fruit for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt bearing the same lot number for the

undelivered portion of the cold-pack fruit. In addition to showing the information required by § 112.16, the new receipt shall also indicate the date and number of the receipt which it supersedes.*† [Reg. 4, sec. 5]

112.21 Delivery on nonnegotiable receipts. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cold-pack fruit for which he has issued a negotiable receipt until the receipt has been returned to him and canceled; and shall not deliver cold-pack fruit for which he has issued a nonnegotiable receipt until such receipt has been returned to him, or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.*† [Reg. 4, sec. 6]

112.22 Authority for delivery of cold-pack fruit on nonnegotiable receipt. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of cold-pack fruit covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of cold-pack fruit covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine; Provided, That if the holder of such nonnegotiable receipts agrees in writing to hold blameless both the warehouseman and bondsman for any loss that might result from improper delivery through receipt of an unauthorized telegram, deliveries may be made on receipt of telegraphic orders to be followed immediately with usual confirmation order.*† [Reg. 4, sec. 7]

112.23 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly or indirectly, by any means whatever, compel or attempt to compel the depositor of any cold-pack fruit, stored in his licensed warehouse, to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 8]

DUTIES OF LICENSED WAREHOUSEMAN

112.24 Cold-pack fruit must be inspected. No licensed warehouseman shall receive cold-pack fruit in his licensed warehouse for storage unless a licensed inspector has examined it and found it to be in proper condition and the warehouseman deems it suitable for storage; Provided, That under no condition shall fruit be accepted which, according to the certificate issued by the licensed inspector at the packing plant, was packed more than 12 hours prior to the fruit reaching the proper storage room of the warehouseman. Before accepting any lot of fruit offered for storage the warehouseman shall receive under seal a copy of the certificate issued by the inspector who inspected the fruit at the packing plant. Under no circumstances shall any container or any cold-pack fruit be accepted for storage under the Act and the regulations in this part unless the containers and the fruit both are in conformity with the regulations in this part. If the cold-pack fruit when offered for storage is in cans, the warehouse-

*†For statutory and source citations, see note to § 112.1.

man shall refuse to accept for storage all swells, leakers, rusty cans, or any cold-pack fruit known to be in violation of either State or Federal food and drug laws.* [Reg. 5, sec. 1, SRA, BAE 111, as amended May 29, 1930]

112.25 Insurance; requirements. (a) Each warehouseman, when so requested in writing by the depositor or the lawful holder of the receipt for cold-pack fruit, shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such cold-pack fruit while in his custody insured in his own name, or arrange for its insurance otherwise, to the extent so requested, against loss or damage by fire, lightning, and/or tornado. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested he shall orally or by telegraph or by telephone immediately notify the person making the request. When insurance is not carried in the warehouseman's name, the receipt shall show that the cold-pack fruit is not insured by him. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all cold-packed fruit against loss by fire, lightning, tornado, or breakdowns of machinery and equipment.

(b) Each warehouseman shall keep exposed conspicuously in the place described by § 112.6, and at such other place as the Chief of the Bureau, or his representative, may from time to time designate, a notice stating briefly the conditions under which cold-pack fruit will be insured against loss or damage by fire, lightning, and/or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 2]

112.26 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

112.27 Care of cold-pack fruit in storage. Each warehouseman shall at all times exercise such care in regard to cold-pack fruit in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

After the product leaves the sharp room he must at all times keep it stored in rooms having a temperature not in excess of 20° F; Provided, That in the case of berries packed with benzoate of soda a temperature not less than 32° F. nor in excess of 40° F. must be maintained at all times, and temperature readings made at least four

times in every 24 hours shall be kept.* [Reg. 5, sec. 4, SRA, BAE 111, as amended May 29, 1930]

112.28 Care of nonlicensed cold-pack fruit, or other commodities. If at any time a warehouseman shall handle cold-pack fruit other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to them as not to endanger the cold-pack fruit in his custody as a licensed warehouseman, or impair his ability to meet his obligations and perform his duties under the Act and this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of or impair the insurance on cold-pack fruit covered by licensed receipts.*† [Reg. 5, sec. 5]

112.29 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancellation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 6]

112.30 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for service rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the Bureau a copy of his rules and schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges, he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 112.6, and at such other places, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 7]

112.31 Business hours. Each warehouseman shall have his facilities available continuously during the packing season for the purpose of receiving cold-pack fruit for storage and delivering cold-pack fruit out of storage, Provided That no fruit shall be received during any period of a breakdown. At all times other than during the packing season the warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open.

*†For statutory and source citations, see note to § 112.1.

Such notice shall also indicate the name and address of the person authorized to make delivery upon lawful demand and surrender of the receipt.*† [Reg. 5, sec. 8]

112.32 Identification of lots. Each warehouseman shall, upon acceptance for storage of any lot of cold-pack fruit, so store the same that the identity of the lot will be preserved. If several deliveries to the warehouse are made at daily or other intervals of time, the lot number given to the first delivery of a depositor shall be given to each delivery until the lot has been completed, provided subsequent deliveries to the warehouse are all piled with the first lot. To every such completed lot and to every uncompleted lot the warehouseman shall affix a lot card or identification tag to the beam, if any, above the stored goods, or to the nearest available place to such stored goods, and he shall also affix a lot card or identification tag to one of the outer rows of barrels or containers, which shall be at all times visible and a further means of identifying the lot with the receipt that covers it.*† [Reg. 5, sec. 9]

112.33 Lot card record. The warehouseman shall indicate on the lot card or identification tag mentioned in § 112.32, (a) the name of the licensed warehouseman; (b) the lot number assigned to the lot of cold-pack fruit; (c) the number of containers in the lot; (d) the size of such containers; (e) the packer's code mark; (f) the dates received in storage; (g) the number of the receipts covering the lot; and (h) the kind of cold-pack fruit that is in the containers, and the grade thereof when grade has been determined.*† [Reg. 5, sec. 10]

112.34 Accounts system. Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, or his authorized representative, which will show for each lot of cold-pack fruit the name and address of the depositor, the lot number mentioned in § 112.32, the depositor's code and other identifying marks of the lot, the number of barrels or containers, the grade when grade is determined, the kind of cold-pack fruit in the lot, the size of the cans when cold-pack fruit is stored in such containers, or the number of cases that would be occupied by such cans if they were cased, the dates received into and delivered out of storage, and the receipts issued and canceled. Such accounts shall include a detailed record of all moneys received and disbursed and all effective insurance policies, if any. A separate record for each depositor shall be kept.*† [Reg. 5, sec. 11]

112.35 Reports. Each warehouseman shall, from time to time, make such reports as the Chief of the Bureau may require, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.*† [Reg. 5, sec. 12]

112.36 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Bureau, an exact copy of each report submitted by such warehouseman under §§ 112.35, 112.48.*† [Reg. 5, sec. 13]

112.37 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau shall forward his canceled receipts for auditing to Washington or to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as the Bureau may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 14]

112.38 Inspection and examination of warehouse. Each warehouseman shall permit any officer or agent of the Department of Agriculture, including inspectors under the Federal Food and Drugs Act, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent the assistance necessary to enable him to make such inspection or examination under this section.*† [Reg. 5, sec. 15]

112.39 Weighing, testing, measuring apparatus. The apparatus used for determining the weight, quantity, or quality stated in a receipt or certificate shall be subject to examination by any officer or agent of the Department of Agriculture employed for such purpose. If the Bureau shall disapprove such apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight, quantity, or quality of cold-pack fruit for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 16]

112.40 Care of warehouses. Each warehouseman shall keep the stock stored in his licensed warehouse in an orderly manner, shall provide sufficient aisle space so as to permit easy and ready access to any and all lots of cold-pack fruit, and shall so store each lot as to facilitate sampling of cold-pack fruit and inspection for condition.*† [Reg. 5, sec. 17]

112.41 Signs of tenancy. (a) Each licensed warehouseman shall, during the life of his license, maintain suitable signs on the licensed property in such a manner as will give ample notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of appropriate size and design and shall include the following: (1) The name of the licensee, (2) the license number of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part, subject to the approval of the Bureau.

(d) Upon the expiration of his license, or during periods of suspension thereof, the warehouseman shall immediately remove such signs or portions thereof as may convey the impression that the warehouse is licensed.

(e) The warehouseman shall not permit any signs to remain on his licensed property which might lead to confusion as to the tenancy.*† [Reg. 5, sec. 18]

*†For statutory and source citations, see note to § 112.1.

112.42 Deteriorating goods; handling. If the warehouseman considers that any cold-pack fruit in his warehouse is out of condition, or becoming so, he shall direct a licensed inspector to examine the cold-pack fruit in question, and if such inspector finds such cold-pack fruit to be out of condition, or becoming so, the warehouseman shall give immediate notice of the facts in the manner and to the persons specified in § 112.43 (a), (b), and (c).^{*†} [Reg. 5, sec. 19]

112.43 Notification of deteriorating cold-pack fruit. (a) The notice required by § 112.42 shall state (1) the warehouse in which the cold-pack fruit is stored; (2) the quantity, kind, and grade of the cold-pack fruit at the time the notice is given; (3) the actual condition of the cold-pack fruit as nearly as can be ascertained and the reason, if known, for such conditions; and (4) the outstanding receipts covering the cold-pack fruit in question, giving the number and date of each such receipt and the quantity, kind, and grade of the cold-pack fruit as stated in each receipt.

(b) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the person holding the receipts if known to the warehouseman; (2) to the person who originally deposited the cold-pack fruit; (3) to any other persons known by the licensed warehouseman to be interested in the cold-pack fruit; (4) to the Chief of the Bureau; and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. If either the holder of the receipts or the owner or owners, or both, of the cold-pack fruit are known to the warehouseman and cannot in the regular course of the mails be reached within 12 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone. The costs of such messages may be charged against the products in question.

(c) Any person interested in any cold-pack fruit or the receipt covering such fruit stored in a licensed warehouse may, in writing, notify the warehouseman of his interest, and such warehouseman shall keep a record of that fact. If such person requests in writing that he be notified regarding the condition of any such cold-pack fruit and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(d) If the cold-pack fruit advertised in accordance with the requirements of this section have not been disposed of by the owner thereof within five days from the dispatch of notice of their being out of condition, the warehouseman in whose warehouse the cold-pack fruit is stored may sell the same at public auction at the expense and for the account of the owner, after giving five days' notice in the manner specified in paragraphs (a), (b), (c) of this section.

(e) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any cold-pack fruit after sending notification of its condition in accordance with this section.^{*†} [Reg. 5, sec. 20]

112.44 Additional space; licensing. If at any time a warehouseman shall be offered for storage in his warehouse cold-pack fruit in

excess of the licensed capacity as shown on his license, he shall not accept such cold-pack fruit until he has first secured authority through an amended license, and after such authority has been granted the warehouseman shall continue to arrange the cold-pack fruit so as not to obstruct free access thereto and the proper use of fire equipment provided for such warehouse.*† [Reg. 5, sec. 21]

112.45 Removal of product only upon surrender of receipt. Except as permitted by law or the regulations in this part, a warehouseman shall not remove any cold-pack fruit from the warehouse, or the part thereof designated in the receipt, unless such receipt is first surrendered and canceled. If any cold-pack fruit is removed from the warehouse prior to the return and cancelation of the receipt, the warehouseman shall immediately notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 22]

112.46 Duties under State law; performance. Each warehouseman shall faithfully perform his obligations as a warehouseman under the laws of the State in which he is conducting his warehouse and such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of cold-pack fruit in such warehouse.*† [Reg. 5, sec. 23]

112.47 Breakage of equipment; notification. If at any time the equipment or machinery of a warehouse breaks down, the warehouseman shall immediately notify by telegraph the Chief of the Bureau of such fact and advise when he expects to be able to place such machinery or equipment in proper working order.*† [Reg. 5, sec. 24]

112.48 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to notify immediately by telegraph the Chief of the Bureau of the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 25]

112.49 Copies of inspection certificates; filing. When an inspection, grade, and weight certificate has been issued by a licensed inspector, grader, and weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cold-pack fruit covered by such certificate is stored, and such certificate shall become a part of the records of the warehouseman.*† [Reg. 5, sec. 26]

FEES

112.50 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to a sampler, grader, weigher or an inspector.* [Reg. 6, sec. 1, SRA, BAE 111, as amended June 29, 1931]

112.51 Inspection fee. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application by a warehouseman, a fee at the rate of \$1 for each 50,000 pounds of the storage capacity, or fraction thereof, determined in accordance with § 112.12 (a), but in no case less than \$10 nor more

*†For statutory and source citations, see note to § 112.1.

than \$200, and, for each re-examination or reinspection applied for by such warehouseman, a fee based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.* [Reg. 6, sec. 2, SRA, BAE 111, as amended June 29, 1937]

112.52 Advance deposit. Before any warehouseman's license or amendment thereto, or any sampler's, grader's, weigher's, or inspector's license, is granted, or an original examination or inspection, or re-examination or reinspection, applied for by a warehouseman, is made, pursuant to the regulations in this part, the warehouseman, and/or sampler, grader, weigher, or inspector, shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."* [Reg. 6, sec. 3, SRA, BAE 111, as amended June 29, 1931]

112.53 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 112.52 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS, GRADERS, AND WEIGHERS

112.54 Inspector's, grader's, weigher's application. (a) Application for license to inspect, grade, and weigh cold-pack fruit under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain (1) the name and location of the warehouse or warehouses licensed, or for which application for license has been made under the Act, in which cold-pack fruit sought to be inspected, graded, and weighed under such license is or may be stored; (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehousemen for the purpose; (3) satisfactory evidence that he has had the necessary experience to properly inspect, grade, and weigh the kind of cold-pack fruit for which a license is sought; (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him; and (5) such other information as the Bureau may deem necessary.*† [Reg. 7, sec. 1]

112.55 Examination of applicants. Each applicant for a license as an inspector, grader, and weigher, and each licensed inspector, grader, and weigher, shall, whenever requested by an authorized agent of the Department of Agriculture designated by the Chief of the Bureau for the purpose, submit to an examination or test to show his ability to perform properly the duties for which he is applying for a license or for which he has been licensed.*† [Reg. 7, sec. 2]

112.56 License shall be posted. Each licensed inspector, grader, and weigher shall keep his license conspicuously posted in the office where the receipts are issued.*† [Reg. 7, sec. 3]

112.57 No discrimination in service. Each inspector, grader, and weigher, when requested, shall, without discrimination, as soon as practicable and upon reasonable terms, inspect, grade, and weigh and certificate the condition, grade, and weight of cold-pack fruit stored or to be stored in a licensed warehouse, if such cold-pack fruit be offered to him under such conditions as permit proper inspecting, grading, and weighing. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection, grade, or weight certificate shall be issued under the Act for cold-pack fruit not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

112.58 Inspection, grade, weight certificate; form. (a) Each inspection, grade, and weight certificate issued under the Act by a licensed inspector, grader, and weigher shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (1) the caption "United States Warehouse Act, Cold-Pack Fruit Inspection, Grade, and Weight Certificate"; (2) whether it is an original or copy; (3) the name and location of the warehouse in which the cold-pack fruit is or is to be stored; (4) the place where and the date and hour when the cold-pack fruit was packed and inspected; (5) the number of barrels or other containers, Provided That if the cold-pack fruit is in cans, the size of the cans and the number of cases; (6) the grade of the cold-pack fruit; (7) the kind of cold-pack fruit; (8) the gross, tare, and net weight of the cold-pack fruit when packed; (9) the depositor's name, code, mark, and any other identification mark or marks; (10) a statement that the certificate is issued by a licensed inspector, grader, and weigher under the United States Warehouse Act and the regulations in this part; (11) a blank space in which any general remarks on the condition, grade, weight, or other pertinent information may be shown; (12) any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first obtained; (13) a blank space in which the licensed inspector, grader, and weigher at the place where the cold-pack fruit is packed shall indicate the exact date and hour when the cold-pack fruit described in the certificate left the packing plant for the licensed warehouse; and (14) a blank space in which the licensed

*†For statutory and source citations, see note to § 112.1.

inspector, grader, and weigher at the licensed warehouse shall certify to the exact date and hour when the cold-pack fruit described in the certificate was received at the licensed warehouse and entered the sharp room, and the lot number assigned to it by the warehouseman. Under no circumstances shall certificates be issued for products known to be in violation of Federal or State food and drug laws.

(b) When cold-pack fruit leaves the packing house for the licensed warehouse, the licensed inspector, grader, and weigher who inspected, graded, and weighed said shipment at the packing plant shall insert in the certificate the exact date and hour when the fruit covered by the certificate left the packing plant and shall send under sealed cover, by the quickest available means, the original certificate or certificates describing said shipment, and one copy of each original certificate, to the licensed inspector, grader, and weigher at the licensed warehouse to which said shipment is consigned, who in turn shall insert at the proper place on said certificate the information required by § 112.58 (a) (14), and thereupon deliver the original certificate to the licensed warehouseman with whom the fruit is to be stored.*† [Reg. 7, sec. 5]

112.59 Copies of certificates to be kept. Each licensed inspector, grader, and weigher shall keep for a period of one year, in a place accessible to persons financially interested in the cold-pack fruit, a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the cold-pack fruit covered by the certificate is stored.*† [Reg. 7, sec. 6]

112.60 Licensees to permit and assist in examinations. Each licensed inspector, grader, and weigher shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine at any time his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 112.32, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector, grader, and weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 7]

112.61 Reports. Each licensed inspector, grader, and weigher shall from time to time, when requested by the Bureau, make reports on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed inspector, grader, and weigher.*† [Reg. 7, sec. 8]

112.62 Licenses; suspension; revocation. Pending investigation, the Secretary may, whenever he deems necessary, suspend the license of an inspector temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector, or when the inspector has ceased to perform such services at the warehouse, the Secretary may, without hearing, sus-

pend or cancel the license issued to such inspector. The Secretary may, after opportunity for hearing, when possible, has been afforded in the manner described in this section, suspend or cancel a license issued to an inspector, grader, and weigher, when such inspector, grader, and weigher has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector, grader, and weigher. As soon as it shall come to the attention of a warehouseman that any of the conditions mentioned in this section exists, it shall be his duty to notify in writing the Bureau. Before the license of any inspector, grader, and weigher is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or by his representative, a written statement specifying the charges, and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 112.73.*† [Reg. 7, sec. 9]

112.63 Suspended or revoked license; return; termination of license. (a) If a license issued to an inspector, grader, and weigher is suspended, revoked, or canceled by the Secretary, it shall be returned to the Secretary. At the expiration of any period of suspension of a license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector, grader, and weigher to whom it was originally issued, and it shall be posted as prescribed in § 112.56, Provided That in the discretion of the Chief of the Bureau a new license may be issued without reference to such suspension.

(b) Any license issued to an inspector shall automatically terminate as to any warehouse whenever the license of such warehouse shall be suspended, revoked, or canceled. Thereupon the license of such inspector, grader, and weigher shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended, revoked, or canceled, the Secretary shall issue a new license to the inspector omitting the names of the warehouses for which licenses have been so suspended, revoked, or canceled. Such new license shall be posted as prescribed in § 112.56.*† [Reg. 7, sec. 10]

112.64 Duplicate license. Upon satisfactory proof of the loss or destruction of a license issued to an inspector a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.*† [Reg. 7, sec. 11]

112.65 Unlicensed inspector, grader, weigher; misrepresentation. No person shall in any way represent himself to be an inspector, grader, or weigher under the Act unless he holds an unsuspended, unrevoked, and uncanceled license under the Act.*† [Reg. 7, sec. 12]

COLD-PACK FRUIT, INSPECTION AND CLASSIFICATION

112.66 Classification; statement. Whenever the kind, grade, or other class or condition of cold-pack fruit is required to be or is

*†For statutory and source citations, see note to § 112.1.

stated for the purposes of the Act and the regulations in this part, it shall be stated in accordance with §§ 112.66–112.68.*† [Reg. 8, sec. 1]

112.67 Standards to be used. Until such time as official marketing grades of the United States have been promulgated and are in effect, for the purpose of administering this Act and the regulations in this part, the kind and grade of cold-pack fruit shall be stated as far as applicable (a) in accordance with standards, if any, adopted by the Secretary of Agriculture under the Federal Food and Drugs Act (see Service and Regulatory Announcements, Food and Drug No. 2, September 19, 1927); (b) in the absence of Federal standards, in accordance with the State standards, if any, established by the State in which the warehouse is located; (c) in the absence of any State standards, in accordance with the standards, if any, adopted by any cold-pack fruit organization or by the cold-pack fruit trade generally in the locality in which the warehouse is located, subject to the disapproval of the Chief of the Bureau; or (d) in the absence of the aforesaid standards, in accordance with any standards approved by the Chief of Bureau.*† [Reg. 8, sec. 2]

112.68 Statement of kind, grade, condition. Whenever the kind, grade, or other class or condition of cold-pack fruit is stated for the purposes of this Act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the cold-pack fruit. In case of doubt as to the kind, grade, or condition of a given lot of cold-pack fruit, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of cold-pack fruit offered for storage.*† [Reg. 8, sec. 3]

APPEAL OF GRADES

112.69 Procedure. (a) If a question arises as to whether the kind, grade, or condition of cold-pack fruit was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the cold-pack fruit involved may, after reasonable notice to the other party, submit the question to the Chief of the Bureau, who may appoint a committee to make a determination. The decision of the committee shall be final, unless the Chief shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and to the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and be canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of kind, grade, or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Chief of the Bureau or

his representative shall decide that the expense shall be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

112.70 Bonds required. Every person applying for a license or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248) shall, as such, be subject to all portions of the regulations in this part, except § 112.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of cold-pack fruit and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 112.11, 112.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount not less than \$5,000, as he shall prescribe, to insure the performance by such person with respect to the acceptance of the custody of cold-pack fruit and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

112.71 Publications. Publications under the Act and the regulations in this part shall be made in service and regulatory announcements of the Bureau of Agricultural Economics, and such other media as the Chief of that Bureau may from time to time designate for the purposes.*† [Reg. 10, sec. 2]

112.72 Information of violations. Every person licensed under the Act shall immediately furnish the Chief of the Bureau any information which comes to the knowledge of such persons tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

112.73 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except § 112.69, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by an official of the Department of Agriculture designated by him for the purpose, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary or an official of the Department of Agriculture designated by him for the purpose. The testimony of the witnesses at such oral hearing shall be

*†For statutory and source citations, see note to § 112.1.

upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or an official of the Department of Agriculture authorized by the Secretary. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department of Agriculture. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

112.74 State-Federal laws; no conflict. Nothing in the regulations in this part shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, or inspectors, nor shall the regulations in this part be construed so as to limit the operation of any statute of the United States relating to warehouses, warehousemen, or inspectors now in force in the District of Columbia, or in any Territory or other place under the exclusive jurisdiction of the United States.*† [Reg. 10, sec. 5]

112.75 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 6]

COMBINATION WAREHOUSES

112.76 Combination license. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.* [Gen. Reg. I, sec. 1, May 26, 1928]

112.77 Bond, fees, for combination license. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.* [Gen. Reg. I, sec. 2, May 26, 1928]

PART 113—SEEDS; WAREHOUSES

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CROSS REFERENCE

Seeds (inspection and certification) : See Part 59.

DEFINITIONS

Section 113.1 Meaning of words. Words used in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 113.1 to 113.82, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U. S. C. 268.

†The source of §§ 113.1 to 113.82, inclusive, (except for the amendments noted in the text,) is Regulations for warehousemen storing seeds under the United States Warehouse Act, Department of Agriculture, Jan. 1931. (SRA, BAE 122)

113.2 Terms defined. For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **Seeds.** Alfalfa seed and bluegrass seed, both uncleaned and cleaned, and bentgrass seed containing not less than 97 percent pure bentseed and not more than one percent foreign seed, the identity of which is preserved while in storage.

(b) **The Act.** The United States Warehouse Act approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(c) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(f) **Regulations.** Rules and regulations made under the Act by the Secretary.

(g) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(h) **Warehouse.** Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which seeds are or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which seeds are or may be stored and for which a license has been issued under the Act.

(i) **Warehouseman.** Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing seeds and holding a warehouse license.

(j) **License.** A license issued under the Act by the Secretary.

(k) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(l) **Licensed inspector.** A person licensed under the Act by the Secretary to sample, to inspect, to test, to grade, and to certificate the grade and condition of seeds stored or to be stored in a licensed warehouse.

(m) **Licensed weigher.** A person licensed under the Act by the Secretary of Agriculture to weigh seeds stored or to be stored in a licensed warehouse.

(n) **Receipt.** A warehouse receipt.

(o) **Grade.** That combination of factors such as purity, germination, color, plumpness, freedom from noxious weed seeds, etc., which indicates the quality of seed.

(p) **Purity and germination.** Factors of quality in grading seed which shall be determined in accordance with the latest recommendations of the Association of Official Seed Analysts.

(q) **Noxious weed seeds.** Seeds of dodder, Canada thistle, buckhorn, quack grass, wild mustard, corn cockle, oxeye daisy, and such other weed seeds classed as noxious in the laws or regulations, if any, of the State in which the warehouse is located.

(r) **Dockage.** Weed seeds, chaff, straw, stems, sand, dirt, seeds other than the kind or kinds specified, and such other foreign material and small, shriveled, or broken seeds of the kind or kinds specified as may be removed in properly screening or otherwise recleaning the seed. The quantity of dockage shall be calculated in terms of percentage based on the total weight of the seeds including the dockage. The percentage of dockage so calculated, when equal to 1 percent or more, shall be stated in terms of whole percent, and when less than one percent shall not be stated. A fraction of a percent shall be disregarded.* [Reg. 1, sec. 2, SRA, BAE 122, Nov. 21, 1930, as amended Oct. 31, 1931]

WAREHOUSE LICENSES

113.3 Application form. Applications for licenses under sections 4 and 9 of the Act (46 Stat. 1463, 1464; 7 U.S.C. 244, 248) and for modifications or extensions of licenses under section 5 of the Act (42 Stat. 1282; 7 U.S.C. 245) shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application.*† [Reg. 2, sec. 1]

113.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary that the warehouse or the location of the warehouse is not suitable for the proper storage of seeds, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, that his business methods or reputation are questionable, or that there is any other sufficient reason within the purposes of the Act for not issuing such license.*† [Reg. 2, sec. 2]

113.5 Net assets required. The warehouseman conducting a warehouse licensed, or for which application for license has been made, under the Act shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$2 per hundredweight of the maximum number of hundredweight that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000

*†For statutory and source citations, see note to § 113.1.

and need not be more than \$100,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 113.12 (b).*† [Reg. 2, sec. 3]

113.6 License shall be posted. Immediately upon receipt of his license or of any modification or extension thereof under the Act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

113.7 Suspension or revocation of warehouse licenses. Pending investigation, the Secretary, whenever he deems it necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor submitted by a warehouseman, the Secretary may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, cancel a license issued to a warehouseman when such warehouseman is: (a) bankrupt or insolvent; (b) has parted in whole or in part with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in paragraphs (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Chief of the Bureau of the existing condition. Before a license is revoked or canceled for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 113.79.*† [Reg. 2, sec. 5]

113.8 Return of suspended or revoked warehouse license. When a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed on said license, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in

§ 113.6; or in the discretion of the Chief of the Bureau a new license may be issued.*† [Reg. 2, sec. 6]

113.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same or a new number at the discretion of the Chief of the Bureau.*† [Reg. 2, sec. 7]

113.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

113.11 Time of filing bonds. Unless the warehouseman has previously filed with the Secretary the necessary bond required by §113.12, he shall file such bond within a time, if any, specified by the Secretary, said bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

113.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of \$2 per hundredweight or fractional part thereof, of the maximum number of hundredweight that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purpose of the bond required under §§ 113.11–113.15.

(b) In case of a deficiency in net assets under § 113.5, there shall be added to the amount of the bond, fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary finds the existence of conditions warranting such actions, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.*† [Reg. 3, sec. 2]

113.13 Extension bond. If application is made under § 113.3, for a modification or an extension of a license and no bond previously filed by the warehouseman under §§ 113.11–113.15 covers obligations arising during the period of such modification or extension, the warehouseman shall, when notice has been given by the Secretary that his application for such modification or extension will be granted upon compliance by such warehouseman with the Act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying

*†For statutory and source citations, see note to § 113.1.

with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

113.14 New bond required each year. Whenever a license has been issued for a period longer than one year, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 113.13.*† [Reg. 3, sec. 4]

113.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

113.16 Form. (a) Every receipt, whether negotiable or nonnegotiable, issued for seeds stored in a warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse, (2) the license number of the warehouse, (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (4) the tag, location, or lot number, if any, given to each lot of seeds in accordance with § 113.32, (5) a statement conspicuously placed, whether or not the seeds are insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado, (6) a blank space designated for the purpose in which the condition of the seeds shall be stated, (7) a blank space designated for the purpose in which the kind of seeds shall be stated, (8) the net weight, including dockage, if any, (9) the words "Negotiable" or "Nonnegotiable" according to the nature of the receipt, clearly and conspicuously printed or stamped thereon, and (10) a statement showing the year of growth.

(b) Every receipt, whether negotiable or nonnegotiable, issued for seeds stored in a licensed warehouse shall specify a period not exceeding 1 year, for which the seeds are accepted for storage under the Act and the regulations in this part. Upon demand and the surrender of the old receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, so far as the available capacity of his warehouse then permits and upon such lawful terms and conditions as may be granted by him at such time to other depositors of seeds in the warehouse shall, if he then continue to act as a licensed warehouseman, issue a new receipt for a further specified period not exceeding one year, provided the condition and quality of the seeds is first determined by a licensed inspector. Further ex-

tension of the storage period may not be granted by the warehouseman for any seeds except bluegrass seed, and such further extension may be granted only after the previously issued receipts have been surrendered to the warehouseman and the bluegrass seed has been reinspected by a licensed inspector and found to be in good condition for further storage. After such reinspection, a receipt reciting the condition and grade of the bluegrass seed as found at such reinspection, may be issued for an additional period of one year.

(c) The grade stated in a receipt issued for seeds stored in a warehouse, shall be stated as determined by the licensed inspector who last graded the seeds before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) That the seeds covered by the receipt were inspected by a licensed inspector, and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the seeds covered by the receipt.

(d) Whenever the grade or other class of seeds is stated in a receipt issued for seeds stored in a warehouse, such grade or other class shall be stated in the receipt in accordance with §§ 113.72–113.74.

(e) If a warehouseman issues a receipt for identity-preserved seeds, omitting the statement of grade on request of the depositor as permitted by section 18 of the Act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.* [Reg. 4, sec. 1, SRA, BAE 122, Nov. 21, 1930, as amended July 25, 1933]

113.17 Copies of receipts. If copies are made of receipts, all such copies, except those issued in lieu of the original in case of lost or destroyed receipts, shall, if there be no statute of the United States or law of a State providing otherwise, have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." If copies are not made, then skeleton copies bearing the same numbers as the corresponding original receipts shall be made, but such skeleton copies need not be marked "Copy—Not Negotiable."*† [Reg. 4, sec. 2]

113.18 Lost or destroyed receipts; bond. (a) In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued, and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is

*†For statutory and source citations, see note to § 113.1.

lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success and (2) a bond in an amount double the value, at the time the bond is given, of the seeds represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Bureau, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon (i) preferably, a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (ii) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 3]

113.19 Approval of form of receipts. No receipt shall be issued by a warehouseman except it be (a) in form prescribed by the Chief of the Bureau, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.*† [Reg. 4, sec. 4]

113.20 Partial delivery of seeds. If a warehouseman deliver a part only of a lot of seeds for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the seeds. The new receipts shall show the date of issuance and also indicate the number and date of the receipt first issued.*† [Reg. 4, sec. 5]

113.21 Return of receipts before delivery of seeds. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver seeds for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver seeds for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of seed covered by a nonnegotiable receipt, the receipt itself shall be surrendered.*† [Reg. 4, sec. 6]

113.22 Authority for delivery of seeds on nonnegotiable receipts. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of seeds covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of seeds covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 7]

113.23 Omission of grade; no compulsion by warehouseman. No warehouseman shall, directly or indirectly, by any means whatsoever, compel or attempt to compel the depositor of any seeds stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 8]

DUTIES OF LICENSED WAREHOUSEMAN

113.24 Seeds must be inspected. No warehouseman shall accept seeds for storage until they have been inspected and approved by a licensed inspector.*† [Reg. 5, sec. 1]

113.25 Insurance; requirements. (a) Each warehouseman, when so requested in writing by the depositor of seeds or the lawful holder of the receipt covering any seeds, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such seeds while in his custody insured in his own name, or arrange for their insurance otherwise, to the extent so requested, against loss or damage by fire, lightning, or tornado. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all seeds. When insurance is not carried in the warehouseman's name, the receipt shall show that the seeds are not insured by him.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 113.6, and at such other place as the Chief of the Bureau or his representative may from time to time designate, a notice stating briefly the conditions under which seeds will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 2]

113.26 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

113.27 Care of seeds in storage. Each warehouseman shall at all times exercise such care in regard to seeds in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.*† [Reg. 5, sec. 4]

*†For statutory and source citations, see note to § 113.1.

113.28 Care of nonlicensed seeds or other commodities. If at any time a warehouseman shall handle seeds other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to them as not to endanger the seeds in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision that said commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of or the insurance on seeds covered by licensed receipts.*† [Reg. 5, sec. 5]

113.29 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety, approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancelation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 6]

113.30 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the Act, the warehouseman shall file with the Bureau a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 113.6, and at such other places, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 7]

113.31 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving seeds for storage and delivering seeds out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the ware-

house will be kept open, except when such office or warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) If the warehouse is not to be kept open as above required, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.*† [Reg. 5, sec. 8]

113.32 Numbered tags to be attached to seed. Each warehouseman shall, upon acceptance for storage of any lot of seeds keep each lot separate and distinct from every other lot and preserve the identity of each lot and clearly and permanently affix to each lot an identification number, by use of a tag of good quality, or by stenciling a sufficient number of sacks in the lot, if in sacks, in such manner as will readily make possible the identification of the lot at all times. Such tags shall show the lot number, the number of the receipt issued to cover such seeds, the number of sacks in the lot, the kind of the seeds, their grade, their net weight when they entered storage, and the date they entered storage.*† [Reg. 5, sec. 9]

113.33 Identification tag on stored seeds. Each warehouseman shall so store each lot of seeds for which a receipt under the Act has been issued that the tag or stencil identification marks thereon, required in § 113.32, are visible and readily accessible, and shall arrange all bags in his warehouse so as to permit making a determination of the number of bags in each lot in storage at any time.*† [Reg. 5, sec. 10]

113.34 Delivery of seeds. Except as may be provided by law or the regulations in this part, each warehouseman, upon proper presentation of a receipt for any seeds and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto the identical seeds specified in the receipt.*† [Reg. 5, sec. 11]

113.35 Adulteration. No seeds stored in a licensed warehouse shall be adulterated by the mixture of other seeds, or dockage, or with seeds of distinctly different quality or grade or grown during other crop years.*† [Reg. 5, sec. 12]

113.36 System of accounts. Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, or his authorized representative, which shall show for each bag or lot of seeds the name of the depositor, the weight of the seeds, the number of bags in each lot, the grade when grade is required to be, or is, ascertained, the location in the warehouse, the dates received and delivered out of storage, the receipts issued and canceled, a separate record for each depositor, which shall show the tag number or stencil identification mark mentioned in § 113.32, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies.*† [Reg. 5, sec. 13]

113.37 Reports. Each warehouseman shall, from time to time, make such reports as the Chief of the Bureau may require, on forms

*†For statutory and source citations, see note to § 113.1.

prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.*† [Reg. 5, sec. 14]

113.38 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Bureau, an exact copy of each report submitted by such warehouseman under §§ 113.37, 113.51.*† [Reg. 5, sec. 15]

113.39 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to Washington or to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as the Bureau may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 16]

113.40 Inspection and examination of warehouse. Each warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.*† [Reg. 5, sec. 17]

113.41 Weighing apparatus; inspection. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate shall be subject to examination by an officer or agent of the Department of Agriculture employed for such purpose. If the Bureau shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any seeds for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 18]

113.42 Warehouse to be kept clean. Each warehouseman shall keep his warehouse clean and free from trash, excessive dirt, rubbish, and spilled seeds. He shall also exercise every precaution to keep his warehouse free of rats or other pests that might cause damage or injury to seeds in storage. The warehouseman shall not under any circumstances accept for storage in his warehouse seeds showing the presence of insects or the larvae of insects that will damage seeds, nor continue to keep in storage seeds so affected, without treating them in such manner as will destroy such insects and larvae or with such chemicals as may be approved by the Bureau for that purpose.*† [Reg. 5, sec. 19]

113.43 Fumigation. When necessary, in the opinion of the Chief of the Bureau or his representative, the warehouseman shall fumigate thoroughly his warehouse with chemicals approved by the Bureau.*† [Reg. 5, sec. 20]

113.44 Damp or dirty seeds; no storage. A warehouseman shall not, under any circumstances, accept for storage any seeds with excessive moisture, or that contain foreign material likely to injure

the keeping qualities of the seeds or adversely affect their commercial value, or that are otherwise of a condition rendering them unsuitable for storage, but he may accept such seeds for conditioning purposes and for storage after conditioning.*† [Reg. 5, sec. 21]

113.45 Storage to prevent damage. A warehouseman shall so handle and so store seeds as not to injure or damage them in any manner.*† [Reg. 5, sec. 22]

113.46 Deteriorating seeds; reconditioning. If the warehouseman considers that any seeds in his warehouse are out of condition or becoming so, he shall direct the licensed inspector to examine the seeds in question, and if such inspector finds such seeds to be out of condition or becoming so, and he is of opinion that such seeds can be brought back into condition by mechanical or other means, or that further deterioration can be prevented, the warehouseman shall give immediate notice of the facts to the persons and in the manner specified in § 113.47 (b), (c). If, within 24 hours after the giving of such notice, the owners of such seeds have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the licensed inspector, shall subject the seeds to the proper reconditioning process in his licensed warehouse to the extent to which it is equipped with machinery suitable for the purpose, otherwise in any other warehouse so equipped.*† [Reg. 5, sec. 23]

113.47 Deteriorating seeds; handling. (a) If a warehouseman, with the approval of the licensed inspector, shall determine that any seeds are deteriorating and that such deterioration cannot be stopped, he shall give immediate notice thereof in accordance with paragraphs (b), (c) of this section.

(b) Such notice shall state (1) the warehouse in which the seeds are stored, (2) the quantity, kind, and grade of the seeds at the time the notice is given, (3) the actual condition of the seeds as nearly as can be ascertained, and the reason, if known, for such condition, and (4) the outstanding receipts covering the seeds out of condition, giving the number and date of each such receipt and the quantity, the kind, and grade of the seeds as stated in each such receipt.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman, (2) to the person who originally deposited the seeds, (3) to any other persons known by the licensed warehouseman to be interested in the seeds, and (4) to the Chief of the Bureau. Public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. If the holders of the receipts and the owners of the seeds are known to the warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person, interested in any seeds or the receipt covering such seeds stored in a licensed warehouse, may, in writing, notify the warehouseman of his interest, and such warehouseman shall keep a record of that fact. If such person request in writing that he be notified

*†For statutory and source citations, see note to § 113.1.

regarding the condition of any such seeds and agree to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) If the seeds, advertised in accordance with the requirements of this section, have not been removed from storage by the owner thereof within seven days from the date of notice of their being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner, after giving seven days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any seeds after sending notification of their condition in accordance with this section.*† [Reg. 5, sec. 24]

113.48 Excess storage. If at any time a warehouseman shall be offered for storage in his warehouse seeds in excess of the licensed capacity as shown on his license, he shall not accept such seeds until he has first secured authority through an amended license, and after such authority has been granted, the warehouseman shall continue to so arrange the seeds as not to obstruct free access thereto and the proper use of sprinklers or other fire protection equipment provided for such warehouse.*† [Reg. 5, sec. 25]

113.49 Removal of seeds from storage. Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any seeds from the warehouse or the part thereof designated in the receipt, unless such receipt is first surrendered and canceled. Under no circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall seeds be removed from the warehouse before the surrender of receipts, and immediately upon any such removal the warehouseman shall notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 26]

113.50 State laws, contracts; compliance. Each warehouseman shall faithfully perform his obligations as a warehouseman under the laws of the State in which he is conducting his warehouse and such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of seeds in such warehouse.*† [Reg. 5, sec. 27]

113.51 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegram to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 28]

113.52 Inspection or weight certificates; filing. When an inspection or weight certificate has been issued by a licensed inspector or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the seeds covered by such certificate

are stored, and such certificate shall become a part of the records of the warehouseman.*† [Reg. 5, sec. 29]

113.53 Signs of tenancy. (a) Each licensed warehouseman shall, during the life of his license, maintain suitable signs on the licensed property in such manner as will give ample public notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of appropriate size and design and shall include the following: (1) The name of the licensee, (2) the license number of the warehouse, (3) whether the warehouseman is owner or lessee, and (4) the words "Public Warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part, subject to the approval of the Bureau.

(d) The warehouseman shall immediately remove such signs upon the expiration of his license, or during periods of suspension thereof.

(e) The warehouseman shall not permit signs to remain on his licensed property which might lead to confusion as to the tenancy.*† [Reg. 5, sec. 30]

FEES

113.54 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to a sampler, grader, weigher or an inspector.* [Reg. 6, sec. 1, SRA, BAE 122, as amended June 29, 1931]

113.55 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application by a warehouseman, a fee at the rate of \$4 for each 1,000 hundredweight of the storage capacity, or fraction thereof, determined in accordance with § 113.12 (a), but in no case less than \$10 nor more than \$200, and, for each re-examination or reinspection applied for by such warehouseman, a fee based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.* [Reg. 6, sec. 2, SRA, BAE 122, as amended June 29, 1931]

113.56 Advance deposit. Before any warehouseman's license or amendment thereto, or any sampler's, grader's, weigher's, or inspector's license, is granted, or an original examination or inspection, or re-examination or reinspection, applied for by a warehouseman, is made, pursuant to the regulations in this part, the warehouseman, and/or sampler, grader, weigher, or inspector, shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, draft, or post-office or express money order, payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."* [Reg. 6, sec. 3, SRA, BAE 122, as amended June 29, 1931]

*†For statutory and source citations, see note to § 113.1.
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113.57 Return of excess deposit. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under § 113.56 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS AND WEIGHERS

113.58 Inspector's, weigher's application. (a) Applications for licenses to inspect and grade or to weigh seeds under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by (1) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which seeds sought to be inspected, graded, and weighed under such license are or may be stored, (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (3) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient, (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him, and (5) such other information as the Bureau may deem necessary: Provided, That when an application for a license to inspect seeds is filed by a person who does not intend to inspect for any particular licensed warehouseman but who does intend to inspect seeds stored or to be stored in a licensed warehouse and to issue inspector's certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such seeds, it shall not be necessary to furnish such statement as is required by (2) of this paragraph.

(c) The applicant shall at any time furnish such additional information as the Secretary or the Chief of the Bureau shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to inspect and to weigh upon complying with all the requirements of this section.*† [Reg. 7, sec. 1]

113.59 Examination of applicant. Each applicant for a license as an inspector or as a weigher and each licensed inspector or licensed weigher shall, whenever requested by an authorized agent of the Department of Agriculture designated by the Chief of the Bureau for

the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.*† [Reg. 7, sec. 2]

113.60 Posting of license. Each licensed inspector shall keep his license conspicuously posted in the office where all or most of the inspecting is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Bureau.*† [Reg. 7, sec. 3]

113.61 Duties of licensees. Each inspector and each weigher, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect or weigh and certificate the condition, grade, or weight for storage of seeds stored or to be stored in a licensed warehouse, if such seeds be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such, over persons who request his services in any other capacity. No inspection or weight certificate shall be issued under the Act for seeds not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

113.62 Inspection certificate; form. Each inspection certificate issued under the Act by a licensed inspector shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (a) the caption, "United States Warehouse Act, Seed Inspection Certificate", (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the seeds are or are to be stored, (d) the date of certificate, (e) the location of the seeds at the time of inspection, (f) the identification number or mark of each lot of seeds the identity of which is or is to be preserved, given in accordance with § 113.32, (g) the kind, grade, dockage, and condition of the seeds for storage at the time of inspection, (h) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder, (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the seeds, and (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 5]

113.63 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Seed Weight Certificate", (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the seeds are to be stored, (d) the date of the certificate, (e) the location of the seeds at the time of weighing, (f) the identification number

*†For statutory and source citations, see note to § 113.1.

or mark of each lot of seed, the identity of which is or is to be preserved, given in accordance with § 113.32, (g) the kind, and the net weight of the seeds, (h) that the certificate is issued by a licensed weigher under the United States Warehouse Act and the regulations thereunder, and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

113.64 Combination certificate; use. The weight, kind, grade, and condition of any seeds ascertained by a licensed inspector or a licensed weigher, may be stated on a certificate meeting the combined requirements of §§ 113.62, 113.63, if the form of such certificate shall have been approved for the purpose by the Bureau.*† [Reg. 7, sec. 7]

113.65 Copies of certificates to be kept. Each licensed inspector and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested in the seeds a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the seeds covered by the certificate are stored.*† [Reg. 7, sec. 8]

113.66 Licensees to permit and assist in examination. Each licensed inspector and each licensed weigher shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine at any time, his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 113.36, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector or licensed weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 9]

113.67 Reports. Each licensed inspector and each licensed weigher shall, from time to time, when requested by the Bureau, make reports on forms furnished for the purpose by the Bureau, bearing upon his activities as such licensed inspector or licensed weigher.*† [Reg. 7, sec. 10]

113.68 Licenses; suspension; revocation. Pending investigation, the Secretary may, whenever he deems necessary, suspend the license of an inspector or of a weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector or weigher, or when the inspector or weigher has ceased to perform such services at the warehouse, the Secretary may, without hearing, suspend or cancel the license issued to such inspector or weigher. The Secretary may, after an opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or cancel a license issued to an inspector or a weigher when such inspector or weigher has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector or licensed weigher. As soon as it shall come

to the attention of a warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify in writing the Bureau. Before the license of any inspector or weigher is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or by his representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 113.79.*† [Reg. 7, sec. 11]

113.69 Suspended or revoked license; return; termination of license. (a) If a license issued to an inspector or to a weigher is suspended, revoked, or canceled by the Secretary, it shall be returned to the Secretary. At the expiration of any period of suspension of a license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector or weigher to whom it was originally issued, and it shall be posted as prescribed in § 113.60.

(b) Any license issued to an inspector or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be suspended, revoked, or canceled. Thereupon the license of such inspector or weigher shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended, revoked, or canceled, the Secretary shall issue a new license to the inspector or weigher, omitting the names of the warehouses for which licenses have been so suspended, revoked, or canceled. Such new licenses shall be posted as prescribed in § 113.60.*† [Reg. 7, sec. 12]

113.70 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to an inspector or a weigher, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.*† [Reg. 7, sec. 13]

113.71 Unlicensed inspectors, weighers; misrepresentation. No person shall in any way represent himself to be an inspector or weigher licensed under the Act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the Act.*† [Reg. 7, sec. 14]

SEED INSPECTION AND CLASSIFICATION

113.72 Statement. Whenever the kind, grade, or condition of seeds is required to be or is stated for the purposes of this Act and the regulations in this part, it shall be stated in accordance with §§ 113.72–113.74.*† [Reg. 8, sec. 1]

113.73 Standards to be used. Until such time as official grades of the United States for seeds are in effect, the kind, grade, and condition of seeds shall be stated as far as applicable (a) in accordance with State standards, if any, established by the State in which the warehouse is located, (b) in the absence of any State standards, in accordance with the standards, if any, adopted by any seed organization or by the seed trade generally in the locality in which the ware-

*†For statutory and source citations, see note to § 113.1.

house is located, subject to the disapproval of the Chief of the Bureau, or (c) in the absence of the aforesaid standards in accordance with any standards approved by the Chief of the Bureau.*† [Reg. 8, sec. 2]

113.74 Statement of kind, grade, condition. Whenever the kind, grade, or condition of seeds is stated for the purposes of this Act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the seeds. In case of doubt as to the kind, grade, or condition of a given lot of seeds, a determination shall be made of such facts by drawing samples that are fairly representative of the contents of the lot of seeds offered for storage. These samples shall be thoroughly mixed, and after they are so mixed, from this mixture a quantity sufficient to make a fair determination shall be taken, which shall constitute the sample for the purpose of determining the grade.*† [Reg. 8, sec. 3]

APPEAL OF GRADES

113.75 Procedure. (a) If a question arises as to whether the kind, grade, or condition of the seeds was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the seeds involved may, after reasonable notice to the other party, submit the questions to such representatives of the Bureau as the Chief of the Bureau may appoint. The decision of the representatives of the Bureau shall be final, unless the Chief shall direct a review of the question. Immediately upon making their decision, the representatives of the Bureau shall issue a certificate embodying their findings to the appellants and the licensee or licensees involved.

(b) If the decision of the representatives of the Bureau be that the kind, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of kind, grade, or condition in accordance with the findings of the representatives of the bureau.

(c) All necessary and reasonable expense of such appeal shall be borne by the losing party, unless the Chief of Bureau or his representative shall decide that the expense should be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

113.76 Bonds required. Every person applying for a license, or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248), shall, as such, be subject to all portions of the regulations in this part except § 113.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of seeds and to store the same in any of said warehouses, may, in lieu of a bond or bonds,

complying with §§ 113.11, 113.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of seeds and their storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.*† [Reg. 10, sec. 1]

113.77 Publications. Publications under the Act and the regulations in this part shall be made in Service and Regulatory Announcements of the Bureau of Agricultural Economics, and such other media as the Chief of that Bureau may from time to time designate for the purpose.*† [Reg. 10, sec. 2]

113.78 Information of violations. Every person licensed under the Act shall immediately furnish the Chief of the Bureau any information which comes to the knowledge of such person tending to show that any provision of the Act or the regulations in this part has been violated.*† [Reg. 10, sec. 3]

113.79 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except § 113.75, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by an official of the Department of Agriculture designated by him for the purpose, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before and at a time and place fixed by the Secretary or an official of the Department of Agriculture designated by him for the purpose. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or by an official of the Department of Agriculture authorized by the Secretary. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department of

*†For statutory and source citations, see note to § 113.1.

Agriculture. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

113.80 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 5]

COMBINATION WAREHOUSES

113.81 Combination license. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.* [Gen. Regs. I, sec. 1, Nov. 21, 1930]

113.82 Bond, fees, for combination license. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.* [Gen. Regs. I, sec. 2, Nov. 21, 1930]

PART 114—CHERRIES IN SULPHUR DIOXIDE BRINE WAREHOUSES

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DEFINITIONS

Section 114.1 Meaning of words. Words used in the regulations in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*† [Reg. 1, sec. 1]

*§§ 114.1 to 114.81, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 114.1 to 114.81, inclusive, (except for the amendments noted in the text,) is Regulations for warehousemen storing cherries in sulphur dioxide brine, Department of Agriculture, Aug. 1932. (SRA, BAE 134)

114.2 Terms defined. For the purposes of the regulations in this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

(a) **Cherries in sulphur dioxide brine.** The product made from fresh cherries of proper maturity and of any variety suitable for the manufacture of maraschino-type cherries, stemmed or unstemmed,

pitted or unpitted, packed in and covered at all times with a solution consisting of sulphur dioxide gas in water, of sufficient strength to preserve and bleach the cherries, with the addition of a small amount of hydrated lime or other harmless hardening agent, and stored in properly paraffin-lined sound barrels made of fir, oak, or beech wood, and which are bound with not less than six hoops. For brevity "cherries in sulphur dioxide brine" will be referred to as "cherries in brine" throughout this part.

(b) **The Act.** The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(c) **Person.** An individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) **Secretary.** The Secretary of Agriculture of the United States.

(e) **Designated representative.** The Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

(f) **Chief of the Bureau.** The Chief of the Bureau of Agricultural Economics.

(g) **Department.** United States Department of Agriculture.

(h) **Bureau.** The Bureau of Agricultural Economics of the United States Department of Agriculture.

(i) **Regulations.** Rules and regulations made under the Act by the Secretary.

(j) **Warehouse.** Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which cherries in brine are or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which cherries in brine are or may be stored and for which a license has been issued under the Act.

(k) **Warehouseman.** Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing cherries in brine and holding a warehouse license.

(l) **License.** A license issued under the Act by the Secretary.

(m) **Licensed warehouseman's bond.** A bond required to be given under the Act by a licensed warehouseman.

(n) **Licensed inspector.** A person licensed under the Act by the Secretary, or his designated representative, to sample, to inspect, and/or to certificate the condition of cherries in brine for storage.

(o) **Licensed grader.** A person licensed under the Act by the Secretary, or his designated representative, to grade and certificate the grade of cherries in brine for storage.

(p) **Licensed weigher.** A person licensed under the Act by the Secretary, or his designated representative, to weight and to certificate the weight of cherries in brine for storage.

(q) **Receipt.** A licensed warehouse receipt issued under the Act, unless otherwise specified.

(r) **State.** A State, Territory, or District of the United States.*†
[Reg. 1, sec. 2]

WAREHOUSE LICENSES

114.3 Application forms. Applications for licenses or for amendments thereto under the Act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Bureau, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.*† [Reg. 2, sec. 1]

114.4 Grounds for not issuing license. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of cherries in brine, that the warehouseman is incompetent to conduct such warehouse in accordance with the Act and the regulations in this part, or that there is any other sufficient reason within the intent of the Act for not issuing such license.*† [Reg. 2, sec. 2]

114.5 Net assets required. Any warehouseman conducting a warehouse licensed or for which application for license has been made shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least one cent per pound of the maximum number of pounds that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Chief of the Bureau, except that the amount of such assets shall not be less than \$5,000, and need not be more than \$100,000.

If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability.

A deficiency in required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 114.12 (b), but in no event may a warehouseman be licensed who has not at least \$5,000 net assets.* [Reg. 2, sec. 3, SRA, BAE 134, as amended May 5, 1936]

114.6 License shall be posted. Immediately upon receipt of his license or of any amendment thereto, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.*† [Reg. 2, sec. 4]

114.7 Suspension or revocation of warehouse license. Pending investigation, the Secretary or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing,

*†For statutory and source citations, see note to § 114.1.

suspend or cancel the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole, or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify the Chief of the Bureau immediately of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provisions of the Act, or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 114.78.*† [Reg. 2, sec. 5]

114.8 Return of suspended or revoked warehouse license. When a license issued to a warehouseman terminates or is suspended or revoked by the Secretary, or his designated representative, it shall be returned to the Bureau. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon and it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 114.6; Provided, That in the discretion of the Chief of the Bureau a new license may be issued.*† [Reg. 2, sec. 6]

114.9 Lost or destroyed warehouse license. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof, or a new license, may be issued under the same number.*† [Reg. 2, sec. 7]

114.10 Unlicensed warehousemen must not represent themselves as licensed. No warehouse or its warehouseman shall be designated as licensed under the Act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.*† [Reg. 2, sec. 8]

WAREHOUSE BONDS

114.11 Time of filing bonds. Unless the warehouseman has previously filed with the Secretary the necessary bond required by § 114.12 he shall file such bond within a time, if any, specified by the Secretary or his designated representative, such bond to cover all obligations arising thereunder during the period of the license.*† [Reg. 3, sec. 1]

114.12 Basis of amount of bond; additional amounts. (a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of one cent per pound of cherries in brine of the maximum number of pounds that the warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the Chief of the Bureau, but not less than \$5,000 nor more than \$50,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the Act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 114.11–114.15.

(b) In case of a deficiency in net assets under § 114.5, there shall be added to the amount of the bond fixed in accordance with paragraph (a) of this section an amount equal to such deficiency.

(c) If the Secretary or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.* [Reg. 3, sec. 2, SRA, BAE 134, May 3, 1932, as amended May 5, 1936]

114.13 Extension bond. If application is made under § 114.3, for an amendment to a license and no bond previously filed by the warehouseman under §§ 114.11–114.15 covers obligations arising during the period of such amendment, the warehouseman, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the Act, shall file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the Act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the Act and the regulations in this part, may be filed in lieu of a new bond.*† [Reg. 3, sec. 3]

114.14 New bond required each year. Whenever a continuous form of license has been issued, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, the Secretary, or his designated representative, prior to the date on which that license would have expired had it been issued for but one year, subject to the provisions of § 114.13.*† [Reg. 3, sec. 4]

114.15 Approval of bond. No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the Act

*†For statutory and source citations, see note to § 114.1.

and the regulations in this part until it has been approved by the Secretary, or his designated representative.*† [Reg. 3, sec. 5]

WAREHOUSE RECEIPTS

114.16 Form. (a) Every receipt, whether negotiable or nonnegotiable, issued for cherries in brine stored in a warehouse shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260), embody within its written or printed terms the following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse; (2) the license number of the warehouse; (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws; (4) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship; (5) the lot number given to each lot of cherries in brine, in accordance with § 114.32; (6) a statement conspicuously placed, whether or not the cherries in brine are insured, and if insured, to what extent, by the warehouseman against loss by fire or lightning; (7) a blank space designated for the purpose in which the kind of cherries in brine shall be stated; (8) a blank space where the identifying marks may be stated; (9) blank spaces in which to indicate the gross, tare, and net weight; (10) the number of barrels or containers in each lot; (11) the words "Negotiable" or "Nonnegotiable"; and (12) whether the receipt is an "original", "duplicate", or "copy", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for cherries in brine stored in a warehouse shall specify a period not exceeding one year for which the cherries in brine are accepted for storage under the Act and the regulations in this part. Upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of cherries in brine in his warehouse, if he then continues to act as a licensed warehouseman, may issue a new receipt for a further specified period not exceeding one year; provided it is actually determined by a licensed inspector that the cherries in brine have not deteriorated and that they are in proper condition for storage for another year.

(c) The grade stated in a receipt issued for cherries in brine shall be stated as determined by a licensed grader who graded the cherries in brine on the basis of samples actually drawn not more than 10 days preceding the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) That the cherries in brine covered by the receipt were inspected and graded by a licensed inspector and grader, and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on, the cherries in brine covered by the receipt.

(d) Whenever the grade of cherries in brine is stated in a receipt issued for cherries in brine stored in a warehouse such grade shall be stated in accordance with §§ 114.71–114.73.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the Act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words “Not graded on request of depositor.”

(f) If a warehouseman issues a receipt under the Act omitting any information not required to be stated and for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.*† [Reg. 4, sec. 1]

114.17 Copies of receipts. Either actual copies or skeleton copies of all receipts shall be made, and all copies, except skeleton copies or those issued in lieu of the original, in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the words “Copy—Not Negotiable.”*† [Reg. 4, sec. 2]

114.18 Lost or destroyed receipt; bond. (a) In case of a lost or destroyed receipt another receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success and (2) a bond in amount double the value, at the time the bond is given, of the cherries in brine represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business and is subject to service of process in a suit on the bond in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.*† [Reg. 4, sec. 3]

114.19 Approval of form of receipts. (a) No receipt shall be issued by a licensed warehouseman except it be (1) in the form prescribed by the Chief of the Bureau; (2) upon distinctive paper specified by him; (3) printed by a printer with whom the United States has a subsisting contract and bond for such printing; and (4) on

*†For statutory and source citations, see note to § 114.1.

paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

(b) Upon the expiration, suspension, or revocation of his license the warehouseman shall deliver to the Department all unissued warehouse receipts, and one year after the date of said expiration, suspension, or revocation of the license said receipts may be destroyed without liability to the warehouseman, or prior thereto if authorized by the warehouseman.*† [Reg. 4, sec. 4]

114.20 Partial delivery of cherries. If a warehouseman deliver a part only of a lot of cherries in brine for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the cherries in brine. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.*† [Reg. 4, sec. 5]

114.21 Return of receipts before delivery of cherries. Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cherries in brine for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver cherries in brine for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of cherries in brine covered by a nonnegotiable receipt the receipt itself shall be surrendered for cancellation.*† [Reg. 4, sec. 6]

114.22 Authority for delivery of cherries on nonnegotiable receipts. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of cherries in brine covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of cherries in brine covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release and that the signature of the releasing party is genuine.*† [Reg. 4, sec. 7]

114.23 Omission of grade; no compulsion by warehouseman. No warehouseman shall directly or indirectly, by any means whatsoever, compel or attempt to compel, the depositor of any cherries in brine stored in his licensed warehouse, to request the issuance of a receipt omitting the statement of grade.*† [Reg. 4, sec. 8]

DUTIES OF LICENSED WAREHOUSEMAN

114.24 Cherries must be inspected; method. (a) No licensed receipt shall be issued for any cherries in brine until at least 10 days have elapsed following the placing of the product in barrels, nor until it has been inspected by a licensed inspector and found to be in proper condition for storage. Under no conditions shall any cherries

in brine known to be in violation of either State or Federal food and drug laws be accepted for storage.

(b) Each licensed warehouseman shall with the licensed inspector examine as frequently as necessary all barrels in his licensed stock to see that the product is covered with solution and that the solution is maintained at the proper strength to preserve the product.

(c) During the first 10 days following receipt for storage the warehouseman shall turn each barrel at least once daily.*† [Reg. 5, sec. 1]

114.25 Insurance; requirements. (a) Each warehouseman, when so requested in writing by the depositor of or the lawful holder of the receipt for cherries in brine, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such cherries in brine while in his custody insured in his own name, or arrange for their insurance otherwise, to the extent so requested, against loss or damage by fire and lightning. When insurance is not carried in the warehouseman's name the receipt shall show that the cherries in brine are not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all products tendered for storage.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 114.6, and at such other place as the Chief of the Bureau, or his representative may from time to time designate, a notice stating briefly the conditions under which cherries in brine will be insured against loss or damage by fire and lightning.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.*† [Reg. 5, sec. 2]

114.26 Premiums; inspections; reports. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.*† [Reg. 5, sec. 3]

114.27 Care of cherries in storage. Each warehouseman shall at all times exercise such care in regard to the cherries in brine in his custody as a reasonable careful owner would exercise under the same circumstances and conditions. If barrels are stored flat on top of each other, suitable dunnage comparable to studding measur-

*†For statutory and source citations, see note to § 114.1.

ing not less than 2 by 4 inches shall be placed between the barrels so as to prevent the barrels resting upon each other. If barrels are tiered on end, they shall not be carried more than two barrels high.*† [Reg. 5, sec. 4]

114.28 Care of nonlicensed cherries, or other commodities. If at any time a warehouseman shall handle cherries in brine other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to them as not to endanger the cherries in brine in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the Act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued which shall contain in its terms a provision that said commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of or impair the insurance on products covered by licensed receipts.*† [Reg. 5, sec. 5]

114.29 Records to be kept in safe place. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Chief of the Bureau or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Chief of the Bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancelation and shall be preserved in numerical order thereafter.*† [Reg. 5, sec. 6]

114.30 Warehouse charges. A warehouseman shall not make any unreasonable or exorbitant charge for service rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the Bureau a dated copy of his rules and schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges, he shall file with the Bureau a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 114.6, and at such other places, accessible to the public, as the Chief of the Bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.*† [Reg. 5, sec. 7]

114.31 Business hours. (a) Each warehouse shall be kept open for the purpose of receiving cherries in brine for storage and delivering cherries in brine out of storage every business day for a period

of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such office or warehouse is kept open continuously from 8 a. m. to 6 p. m.

(b) If the warehouse is not to be kept open as above required, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.*† [Reg. 5, sec. 8]

114.32 Numbered tags to be attached to cherries. Each warehouseman shall, upon acceptance for storage of any lot of cherries in brine, so store the same that the identity of the lot will be preserved. To each lot of cherries in brine he shall assign a lot number and shall affix a stack card or identification tag, which shall be at all times visible and shall identify the lot.*† [Reg. 5, sec. 9]

114.33 Identification tag on stored cherries. The warehouseman shall indicate on the stack card or identification tag mentioned in § 114.32, (a) the lot number assigned to the lot of cherries in brine; (b) the number of barrels or containers in the lot; (c) the size of the barrels or containers; (d) the identifying marks on the containers; (e) the number of the receipt issued covering the lot; (f) the date they entered storage; and (g) the kind and grade of cherries in brine when grade is determined.*† [Reg. 5, sec. 10]

114.34 System of accounts. Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Chief of the Bureau, or his authorized representative, which shall show for each lot of cherries in brine the name and address of the depositor, the lot number mentioned in § 114.32, the identifying marks of the lot, the number and size of containers, the grade, when grade is required to be or is ascertained, the dates received for and delivered out of storage, the receipts issued and canceled, a separate record for each depositor, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies.*† [Reg. 5, sec. 11]

114.35 Reports. Each warehouseman shall, from time to time, make such reports as the Bureau may require, on forms prescribed and furnished for the purpose by the Bureau, concerning the condition, contents, operation, and business of the warehouse.*† [Reg. 5, sec. 12]

114.36 Copies of reports to be kept. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the Bureau, an exact copy of each report submitted by such warehouseman under §§ 114.35, 114.49.*† [Reg. 5, sec. 13]

114.37 Canceled receipts; auditing. Each warehouseman, when requested by the Bureau, shall forward his canceled receipts for auditing to Washington or to such field offices of the Bureau as may be designated from time to time. For the purpose of this section, only such portion as the Bureau may designate of each canceled receipt,

*†For statutory and source citations, see note to § 114.1.

numbered to correspond with the actual receipt number, need be submitted.*† [Reg. 5, sec. 14]

114.38 Inspection and examination of warehouse. Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make such inspection or examination under this section.*† [Reg. 5, sec. 15]

114.39 Weighing apparatus; inspection. The apparatus used for determining the weight, quantity, or quality stated in a receipt or certificate, or for testing the strength of preserving solutions, shall be subject to examination by any officer or agent of the Department employed for such purpose. If the Bureau shall disapprove such apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used for the purposes of the Act and the regulations in this part.*† [Reg. 5, sec. 16]

114.40 Warehouse to be kept clean. Each warehouseman shall keep the stock stored in his warehouse in an orderly manner, shall provide sufficient aisle space so as to permit easy and ready access to any and all lots of cherries in brine stored therein, and shall so store each lot as to facilitate sampling and inspection for condition. The warehouseman shall at all times keep his warehouse clean.*† [Reg. 5, sec. 17]

114.41 No storage near radiators or metal roof. The warehouseman shall not store cherries in brine in close proximity to steam or hot-water radiators, or immediately under a metal roof.*† [Reg. 5, sec. 18]

114.42 Ventilation of warehouse. The warehouseman shall take such steps as can be consistently taken to so ventilate his storage that a uniformly cool temperature will be maintained in his warehouse, and he shall maintain such temperatures as are generally considered proper to preserve the quality of the product.*† [Reg. 5, sec. 19]

114.43 Avoidance of freezing. The warehouseman shall provide heat when necessary to avoid freezing.*† [Reg. 5, sec. 20]

114.44 Signs of tenancy. (a) Every warehouseman operating a "field", or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee; (2) the name of the warehouse; (3) whether the warehouseman is owner or lessee; and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the Act and the regulations in this part, subject to the approval of the Bureau.

(d) Immediately upon its expiration, suspension, or revocation all reference to the license shall be removed from the warehouse.

(e) No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.*† [Reg. 5, sec. 21]

114.45 Deteriorating cherries; examination. If the warehouseman considers that any cherries in brine in his warehouse are out of condition, or becoming so, he shall direct the licensed inspector to examine the product in question, and if such inspector finds such product to be out of condition or becoming so, the warehouseman shall give immediate notice of the fact, in the manner and to the persons specified in § 114.46 (a), (b), and (c).*† [Reg. 5, sec. 22]

114.46 Deteriorating cherries; handling. (a) The notice required by § 114.45 shall state (1) the warehouse in which the cherries in brine are stored; (2) the quantity, kind, and grade of the cherries in brine at the time the notice is given; (3) the actual condition of the cherries in brine as nearly as can be ascertained, and the reason, if known, for such condition; and (4) the outstanding receipts covering the cherries in question, giving the number and date of each such receipt and the quantity, the kind, and grade of the cherries as stated in each such receipt.

(b) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman; (2) to the person who originally deposited the cherries in brine; (3) to any other persons known by the licensed warehouseman to be interested in the cherries in brine; (4) to the Chief of the Bureau; and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. If the holders of the receipts and the owners of the cherries in brine are known to the warehouseman and can not in the regular course of the mails be reached within 12 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

(c) Any person interested in any cherries in brine or the receipt covering such cherries stored in a licensed warehouse may, in writing, notify the warehouseman of his interest, and such warehouseman shall keep a record of that fact. If such person requests in writing that he be notified regarding the condition of any such cherries in brine and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(d) If the cherries in brine advertised in accordance with the requirements of this section have not been disposed of by the owner thereof within 10 days from the dispatch of notice of their being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner. Before such sale

*†For statutory and source citations, see note to § 114.1.

the warehouseman shall consult with proper State and Federal officials administering food and drug laws to ascertain whether the sale of the cherries in brine might violate either the State or Federal law.

(e) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any cherries in brine after sending notification of their condition in accordance with this section.*† [Reg. 5, sec. 23]

114.47 Excess storage. If at any time a warehouseman shall be offered for storage in his warehouse, cherries in brine in excess of the licensed capacity as shown on his license, he shall not accept such cherries until he has first secured authority through an amended license, and after such authority has been granted, the warehouseman shall continue to so arrange the cherries in brine as not to obstruct free access thereto and the proper use of sprinklers or other fire-protection equipment provided for such warehouse.*† [Reg. 5, sec. 24]

114.48 Removal of cherries from storage. Except when it may be necessary to protect the cherries in brine because of an emergency, or as may be permitted by law or the regulations in this part, a warehouseman shall not remove any cherries in brine from the warehouse, or the part thereof designated in the receipt, unless such receipt is first surrendered and canceled. If any cherries in brine are removed from the warehouse prior to the return and cancelation of the receipt, the warehouseman shall immediately notify the Chief of the Bureau of such removal and the necessity therefor.*† [Reg. 5, sec. 25]

114.49 Fire loss to be reported by wire. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegraph to the Chief of the Bureau the occurrence of such fire and the extent of damage.*† [Reg. 5, sec. 26]

114.50 Inspection, grade, weight certificate; filing. When an inspection, grade, or weight certificate has been issued by a licensed inspector, grader, or weigher a copy of such certificate shall be filed with the warehouseman in whose warehouse the cherries in brine covered by such certificate are stored, and such certificate shall become a part of the records of the warehouseman.*† [Reg. 5, sec. 27]

114.51 Authorization to sign warehouse receipts. Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.*† [Reg. 5, sec. 28]

FEES

114.52 Warehouse license fees. There shall be charged, assessed, and collected a fee of \$10 for each warehouseman's license or any amendment thereto, and a fee of \$3 for each license issued to each inspector, grader, or weigher.*† [Reg. 6, sec. 1]

114.53 Warehouse inspection fees. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the Act, when such examination or inspection is made upon application by a warehouseman, a fee at the rate of \$1 for each 20,000 pounds of the storage capacity, or fraction thereof, determined in accordance with § 114.12 (a), but in no case less than \$10 nor more than \$200, and for each re-examination or reinspection applied for by such warehouseman a fee based on the extent of the re-examination or reinspection, proportioned to but not greater than that prescribed for the original examination or inspection.*† [Reg. 6, sec. 2]

114.54 Advance deposit. Before any warehouseman's license, or amendment thereto, or any inspector's, weigher's, or grader's license is granted, or before an original examination or re-examination applied for by a warehouseman is made, the warehouseman and/or the inspector, weigher, or grader, shall deposit with the Bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified if required by the Bureau, or post-office or express money order, payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."*† [Reg. 6, sec. 3]

114.55 Return of excess deposit. The disbursing clerk of the department shall hold in his custody each advance deposit made under § 114.54 until the fee, if any, is assessed and he is furnished by the Bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.*† [Reg. 6, sec. 4]

LICENSED INSPECTORS, GRADERS, AND WEIGHERS

114.56 Inspector's, grader's, weigher's application. (a) Department shall hold in his custody each advance deposit made under the Act shall be made to the Chief of the Bureau on forms furnished for the purpose by him.

(b) Each application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain (1) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which the cherries in brine sought to be inspected, graded, and weighed under such license are or may be stored, (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (3) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weigher's licenses one month's experience will be sufficient, (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and

*†For statutory and source citations, see note to § 114.1.

the regulations in this part so far as the same may relate to him, and (5) such other information as the Bureau may deem necessary, Provided, That when an application for a license to inspect and/or grade cherries in brine is filed by a person who does not intend to inspect or grade for any particular licensed warehouseman but who does intend to inspect cherries in brine stored or to be stored in a licensed warehouse and to issue inspector's or grader's certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipts issued to cover such cherries, it shall not be necessary to furnish such statement as is required by (2) of this paragraph.

(c) The applicant shall at any time furnish such additional information as the Secretary or his designated representative, shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to inspect, to grade, and to weigh upon complying with all the requirements of this section.*† [Reg. 7, sec. 1]

114.57 Examination of applicant. Each applicant for a license as an inspector, grader, or weigher and each licensed inspector, licensed grader, or licensed weigher shall, whenever requested by an authorized agent of the Department designated by the Chief of the Bureau for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.*† [Reg. 7, sec. 2]

114.58 Posting of license. Each licensed inspector or licensed grader shall keep his license conspicuously posted in the office where all or most of the inspecting is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Bureau.*† [Reg. 7, sec. 3]

114.59 Duties of licensees. Each inspector, grader, and weigher, when requested, shall without discrimination, as soon as practicable, and upon reasonable terms, inspect, grade, or weigh and certificate the condition, grade, or weight for storage of the cherries in brine stored or to be stored in a licensed warehouse, if such cherries in brine be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such, over persons who request his services in any other capacity. No inspection, grade, or weight certificate shall be issued under the act for cherries in brine not stored or not to be stored in a licensed warehouse.*† [Reg. 7, sec. 4]

114.60 Inspection certificate; form. Each inspection certificate issued under the Act by a licensed inspector shall be in a form approved for the purpose by the Bureau and shall embody within its written or printed terms (a) the caption, "United States Warehouse Act, Cherries in Brine Inspection Certificate", (b) whether

it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the cherries in brine are or are to be stored, (d) the date of the certificate, (e) the location of the cherries in brine at the time of inspection, (f) the identification number or mark of each lot of cherries in brine the identity of which is or is to be preserved, given in accordance with § 114.32, (g) the condition of the cherries in brine for storage at the time of inspection, (h) that the certificate is issued by a licensed inspector, under the United States Warehouse Act and regulations thereunder, (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the cherries, in brine, (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 5]

114.61 Grade certificate; form. Each grade certificate issued under the Act by a licensed grader shall be in a form approved for the purpose by the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Cherries in Brine Grade Certificate", (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the cherries in brine are or are to be stored, (d) the date of the certificate, (e) the location of the cherries in brine at the time of grading, (f) the identification number or mark of each lot of cherries in brine, the identity of which is or is to be preserved, given in accordance with § 114.32, (g) the grade of the cherries in brine, (h) that the certificate is issued by a licensed grader, under the United States Warehouse Act and the regulations thereunder, and (i) the signature of such licensed grader. In addition, the grade certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 6]

114.62 Weight certificate; form. Each weight certificate issued under the Act by a licensed weigher shall be in a form approved for the purpose by the Bureau, and shall embody within its written or printed terms (a) the caption "United States Warehouse Act, Cherries in Brine Weight Certificate", (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the cherries in brine are or are to be stored, (d) the date of the certificate, (e) the location of the cherries in brine at the time of weighing, (f) the identification number or mark of each lot of cherries in brine, the identity of which is or is to be preserved, given in accordance with § 114.32, (g) the gross, tare, and net weight of the product, (h) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder, and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Bureau is first secured.*† [Reg. 7, sec. 7]

*†For statutory and source citations, see note to § 114.1.

114.63 Combination certificate; use. The weight, grade, and condition of any cherries in brine ascertained by a licensed inspector, grader, or weigher may be stated on a certificate meeting the combined requirements of §§ 114.60–114.62, if the form of such certificate shall have been approved for the purpose by the Bureau.*† [Reg. 7, sec. 8]

114.64 Copies of certificates to be kept. Each licensed inspector, grader, and weigher shall keep for a period of one year in a place accessible to persons financially interested in the cherries in brine a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the cherries in brine covered by the certificate are stored.*† [Reg. 7, sec. 9]

114.65 Licenses to permit and assist in examination. Each licensed inspector, grader, and weigher shall permit any officer or agent of the Department, authorized by the Secretary or his designated representative for the purpose, to inspect or examine at any time, his books, papers, records, and accounts relating to the performance of his duties under the Act and the regulations in this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination of records mentioned in § 114.34, as far as any such inspection or examination relates to the performance of the duties of such licensed inspector, grader, or weigher under the Act and the regulations in this part.*† [Reg. 7, sec. 10]

114.66 Reports. Each licensed inspector, grader, and weigher shall, from time to time, when requested by the Bureau, make reports on forms furnished for the purpose by the Bureau, bearing upon his activities as such inspector, grader, or weigher.*† [Reg. 7, sec. 11]

114.67 Licenses; suspension; revocation. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector, grader, or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector, grader, or weigher, or when the inspector, grader, or weigher has ceased to perform such services at the warehouse, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector, grader, or weigher. The Secretary, or his designated representative, may, after hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector, grader, or weigher when such inspector, grader, or weigher has in any manner become incompetent or incapacitated to perform his duties. As soon as it shall come to the attention of a warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify the Bureau in writing. Before the license of any inspector, grader, or weigher, is suspended or revoked pursuant to section 12 of the Act (46 Stat. 1464; 7 U.S.C. 253), such licensee shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within

which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 114.78.*† [Reg. 7, sec. 12]

114.68 Suspended or revoked license; return; termination of license. (a) If a license issued to an inspector, grader, or weigher is suspended or revoked, by the Secretary, or by his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of a license unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector, grader, or weigher to whom it was originally issued, and it shall be posted as prescribed in § 114.58.

(b) Any license issued to an inspector, grader, or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be suspended or revoked. Thereupon the license of such inspector, grader, or weigher shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended or revoked, the Secretary, or his designated representative, shall issue a new license to the inspector, grader, or weigher, omitting the names of the warehouses for which licenses have been so suspended or revoked. Such new licenses shall be posted as prescribed in § 114.58.*† [Reg. 7, sec. 13]

114.69 Lost or destroyed licenses. Upon satisfactory proof of the loss or destruction of a license issued to an inspector, grader, or weigher, a duplicate thereof or a new license may be issued under the same or a new number.*† [Reg. 7, sec. 14]

114.70 Unlicensed inspectors, graders, weighers; misrepresentation. No person shall in any way represent himself to be an inspector, grader, or weigher licensed under the Act unless he holds an unsuspended and unrevoked license issued under the Act.*† [Reg. 7, sec. 15]

INSPECTION, GRADING, AND CLASSIFICATION OF CHERRIES IN BRINE

114.71 Classification; statement. Whenever the kind, grade, or other class or condition of cherries in brine is required to be or is stated for the purposes of the Act and the regulations in this part, it shall be stated in accordance with §§ 114.71–114.73.*† [Reg. 8, sec. 1]

114.72 Standards to be used. Until such time as official marketing grades of the United States have been promulgated and are in effect, for the purpose of administering this Act and the regulations in this part, the kind and grade of cherries in brine shall be stated as far as applicable (a) in accordance with any tentative standards of the Department; (b) in the absence of Federal standards in accordance with the State standards, if any, established in the State in which the warehouse is located, subject to the disapproval of the Chief of Bureau; (c) in the absence of any State standards, in accordance with the standards, if any, adopted by any cherries-in-brine organization or by the cherries-in-brine trade generally in the locality in which the warehouse is located, subject to the disapproval

*†For statutory and source citations, see note to § 114.1.

of the Chief of the Bureau; or (d) in the absence of aforesaid standards in accordance with any standards approved by the Chief of the Bureau.*† [Reg. 8, sec. 2]

114.73 Statement of kind, grade, condition. Whenever the kind, grade, or other class or condition of cherries in brine is stated for the purposes of this Act and the regulations in this part, the terms shall be correctly applied and shall be so selected as not to convey a false impression. In case of doubt as to the kind, grade, or condition of a given lot of cherries in brine, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of cherries in brine offered for storage.*† [Reg. 8, sec. 3]

APPEAL OF GRADES

114.74 Procedure. (a) If a question arises as to whether the kind, grade, or condition of the cherries in brine was correctly stated in a receipt of grade certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the cherries in brine involved may, after reasonable notice to the other party, submit the question to the Chief of the Bureau who may appoint a committee to make a determination. The decision of the committee shall be final, unless the Chief shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and to the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and be canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of kind, grade, or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Chief of the Bureau or his representative, shall decide that the expenses should be prorated between the parties.*† [Reg. 9, sec. 1]

MISCELLANEOUS

114.75 Bonds required. Every person applying for a license or licensed under section 9 of the Act (46 Stat. 1464; 7 U.S.C. 248), shall, as such, be subjected to all portions of the regulations in this part except § 114.25, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the Act, to accept the custody of cherries in brine and to store the same in any of said warehouses may, in lieu of a bond or bonds, complying with §§ 114.11, 114.12, file with the Secretary a single bond meeting the requirements of the Act and the regulations in this part, in such form and in such amount not less than \$5,000, as he shall prescribe, to insure the performance by such person

with respect to the acceptance of the custody of cherries in brine and their storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses or amendments thereto. In fixing the amount of such bond consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him to meet such conditions.*† [Reg. 10, sec. 1]

114.76 Publications. Publications under the Act and the regulations in this part shall be made in such media as the Chief of the Bureau may from time to time designate.*† [Reg. 10, sec. 2]

114.77 Information of violations. Every person licensed under the Act shall immediately furnish the Bureau any information which comes to the knowledge of such persons tending to show that any provision of the Act or these regulations has been violated.*† [Reg. 10, sec. 3]

114.78 Procedure in hearings. For the purpose of a hearing under the Act and the regulations in this part, except § 114.74, the licensee involved shall be allowed a reasonable time, fixed by the Secretary, or his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by the Secretary, or his designated representative. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary, or his designated representative. Every written entry in the records of the department made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.*† [Reg. 10, sec. 4]

114.79 Combination license. A license may be issued for the storage of two or more agricultural products in a single warehouse or in one or more compartments in the same warehouse. Where such

*†For statutory and source citations, see note to § 114.1.

a license is desired, a single application, inspection, bond, record, report, or other paper, document, or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Chief of the Bureau.*† [Reg. 10, sec. 5]

114.80 Bond, fees, for combination license. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Chief of the Bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees applicable to the particular compartment or compartments to be licensed.*† [Reg. 10, sec. 6]

114.81 Amendments. Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the Act.*† [Reg. 10, sec. 7]

PART 151—FIELD WAREHOUSES

Sec.		Sec.	
151.1	Terms defined.	151.9	Proper naming of field warehouse.
151.2	Supplementary to commodity regulations.	151.10	Filing of rules, schedule of charges; contracts with depositors.
151.3	Warehouse licenses; application form.	151.11	Receipts; form.
151.4	License; requirements of commodity regulations apply in issuance.	151.12	Receipts; conditions regarding issuance.
151.5	Relationship between warehouseman and depositor.	151.13	License; conditions regarding issuance.
151.6	Custodian; relationship; compensation; qualification.	151.14	No indemnification against loss account dereliction of warehouseman.
151.7	Licensed space; separation; locking.	151.15	Storage bins; sealing; licensing; operation.
151.8	Licensed field warehouse; locking; supervision.	151.16	Signs of tenancy; placing.

Section 151.1 Terms defined. For the purposes of this part, unless the context otherwise require, the following terms shall be construed, respectively, to mean:

(a) **Commodity regulations.** Rules and regulations made under the Act by the Secretary for warehousemen storing certain designated agricultural products.

(b) **Field warehouse.** A warehouse that is operated or is to be operated for the purpose of issuing warehouse receipts representing a disinterested custodianship of the products stored therein and which is leased from any person having a financial interest in the products.

(c) **Field warehouseman.** Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of operating a field warehouse as defined in this section.

(d) **Custodian.** A person appointed or designated by a field warehouseman to supervise or manage a field warehouse licensed under the Act.

(e) Assistant custodian. A person appointed or designated by a warehouseman to assist the custodian of a field warehouse in the supervision and management thereof.*† [Sec. 1]

*§§ 151.1 to 151.16, inclusive, issued under the authority contained in sec. 28, 39 Stat. 490; 7 U.S.C. 268.

†The source of §§ 151.1 to 151.16, inclusive, is Regulations supplementary to the commodity regulations under the United States Warehouse Act for field warehousemen, Department of Agriculture, July 30, 1932. (SRA, BAE 136)

151.2 Supplementary to commodity regulations. Nothing in the field warehouse regulations in this part shall be construed to conflict with, or to authorize any conflict with, or in any way impair or limit, the effect or operation of the commodity regulations issued by the Secretary for warehousemen storing any specified product or products, but the regulations in this part shall be considered as supplemental to all such commodity regulations and to be effective as to all field warehouses and field warehousemen operating under the Act.*† [Sec. 2]

151.3 Warehouse licenses; application form. Applications for licenses to operate field warehouses shall be made in accordance with the commodity regulations for warehousemen storing the particular agricultural product or products stored or to be stored in the field warehouse.*† [Sec. 3]

151.4 License; requirements of commodity regulations apply in issuance. Compliance with all the preliminary requirements of the commodity regulations applicable to the agricultural product or products in question, as well as the regulations in this part, shall be prerequisite to issuing a license to operate a field warehouse.*† [Sec. 4]

151.5 Relationship between warehouseman and depositor. There shall be no close relationship, either by blood or marriage, between the field warehouseman or his custodians and any depositor or the lessor of the field warehouse.*† [Sec. 5]

151.6 Custodian; relationship; compensation; qualification. (a) No employee, either full or part-time, of any depositor, nor any person who is a close blood or other relative of any person occupying a supervisory or directing position in the business or organization of any depositor, or closely interested with any depositor in any business, shall be appointed as a custodian or an assistant custodian by a licensed field warehouseman; nor shall any person be appointed as a custodian or an assistant custodian if he has resigned from the employ of any depositor for the purpose of accepting employment from the warehouseman at the warehouse.

(b) The compensation, or any part thereof, of any custodian, assistant custodians, or any other employee of the warehouseman, if any there be, must be paid by the warehouseman and not by any depositor. The custodian or assistant custodians need not be full-time employees of the warehouseman, but shall not be, under any conditions, part or full-time employees of any depositor of products in the warehouse.

(c) Each person designated by a licensed field warehouseman as a custodian or an assistant custodian shall file with the Bureau a state-

*†For statutory and source citations, see note to § 151.1.

ment, on a form provided by the Bureau for the purpose, setting forth his qualifications and experience in warehouse work, the occupation or business he has been engaged in during the five years next preceding the date of the statement, the names of his employers, if any, during such 5-year period, the names of at least five persons who can vouch for his character and qualifications for the position, and such other information as the Secretary, or his designated representative, may require.

(d) No custodian shall accept instructions from anyone other than the warehouseman.

(e) No custodian or assistant custodian shall enter upon his duties as such at a licensed field warehouse until he has been notified in writing by the Bureau that his appointment has been approved.*† [Sec. 6]

151.7 Licensed space; separation; locking. The warehouse space licensed or to be licensed shall be substantially separated from other space and shall be kept securely locked or sealed in accordance with § 151.15. All keys to locks shall be kept in the possession of the warehouseman or his authorized agent at all times. In case there is any doubt whether all keys to the warehouse are in possession of the warehouseman or his agents, the warehouseman shall provide new locks and keys for the warehouse.*† [Sec. 7]

151.8 Licensed field warehouse; locking; supervision. It shall be the duty of a licensed field warehouseman to keep the licensed field warehouse securely locked at all times except when the warehouseman, the custodian, or an assistant custodian is present, and no person other than the warehouseman, the custodian, or an assistant custodian shall have access to the licensed warehouse or the products stored therein except in the presence of and with the consent of such warehouseman, custodian, or assistant custodian: Provided, That if any night watchman in the employ of the owner of the building is required to enter the licensed warehouse under an insurance requirement and his only duties at the warehouse building are those of a night watchman he may be given a key to the warehouse for that purpose, if the approval of the Bureau is first secured and the watchman's service is fully provided for in the field warehouse lease agreement: Provided further, That the provisions of this section shall not apply in the case of warehouses where the bin system is in effect as outlined in § 151.15. The warehouseman shall at all times exercise absolute and complete control and dominion over the licensed warehouse and the products stored therein to the complete exclusion of all parties except as provided herein.*† [Sec. 8]

151.9 Proper naming of field warehouse. No misleading name or designation shall be applied to any field warehouse licensed under the Act, but in every case the name shall indicate that the warehouse is being operated as a public warehouse by the warehouseman as lessee.*† [Sec. 9]

151.10 Filing of rules, schedule of charges; contracts with depositors. (a) Before a license to conduct a field warehouse is

granted under the Act, the warehouseman shall file with the Bureau, in accordance with the requirements of the commodity regulations, a copy of his rules and a schedule of charges; and, in addition, he shall file copies of all contracts and agreements entered into by and between him and any depositor or the lessor of the field warehouse which in any way relate to the establishment, operation, management, or payment of expenses connected with the operation of the warehouse. If there are any agreements or understandings between the lessor of the warehouse and the lessee with respect to any of the aforementioned that have not been reduced to writing, the warehouseman shall file with the Bureau a written statement setting forth the substance of such verbal agreements and understandings.

(b) All warehouses licensed under the Act must be operated as public warehouses, and no rules or schedules of charges filed by any warehouseman applying for a license under the Act shall be approved by the Secretary, or his designated representative, if it is not clear that the requirements of section 13 of the Act (39 Stat. 488; 7 U.S.C. 254) can and will be met.*† [Sec. 10]

151.11 Receipts; form. Every receipt, whether negotiable or nonnegotiable, issued for products stored in a field warehouse, shall, in addition to complying with the requirements of section 18 of the Act (42 Stat. 1284; 7 U.S.C. 260) and sections of the applicable commodity regulations, embody within its printed terms a statement that the warehouseman is lessee of the warehouse.*† [Sec. 11]

151.12 Receipts; conditions regarding issuance. Warehouse receipts for products stored in a field warehouse licensed under the Act shall be issued in the town or city where the warehouse is located, except that where two or more licensed field warehouses are operated by a warehouseman receipts for all such warehouses may be issued from a central point, provided such central point is not more than 25 miles distant from the farthest warehouse. In cases where receipts are issued from central points the warehouseman shall, when requested by Department representatives, provide transportation for such representatives, when engaged in regular inspection work, to and from such warehouses.*† [Sec. 12]

151.13 License; conditions regarding issuance. No field warehouse license shall be issued by the Secretary, or his designated representative, unless the lessee is wholly disinterested with respect to depositors and the application is supported by the original lease and one copy, dated and signed by the contracting parties, and embodying the following: (a) A definite period of time not less than one year after the date of execution, (b) a description of the exact space leased to the field warehouseman and a statement that all of such space is to be covered by the license, if issued, and (c) evidence that said lease has been duly recorded in the county where such warehouse is located, except where there is a statutory inhibition against the recording of such leases, and (d) a clause prohibiting the cancellation of the lease or ejecting the warehouseman so long as any receipt issued under the Act and the regulations is outstanding.*† [Sec. 13]

*†For statutory and source citations, see note to § 151.1.

151.14 No indemnification against loss account dereliction of warehouseman. A license to conduct a field warehouse under the Act shall not be issued, or if issued, shall not be allowed to remain in effect, if any depositor agrees or has agreed with the warehouseman to indemnify him against loss due to failure of the warehouseman to exercise such care of the products in his custody as a reasonably prudent owner would exercise or as the warehouseman is required to exercise under the Act and regulations.*† [Sec. 14]

151.15 Storage bins; sealing; licensing; operation. In the case of warehouses where approved storage bins have been erected and such bins can be sealed with seals furnished by the Department for the purpose, the bins may be licensed and the depositors may, with the consent of the warehouseman, have access to such bins for the purpose of placing goods therein before the seals are affixed and before warehouse receipts are issued by the warehouseman, or for the purpose of removing goods therefrom after the outstanding receipts for all goods in such bin or bins have been surrendered to and canceled by the warehouseman, and the warehouseman or his custodian, or assistant custodian, has broken the seals. Under no circumstances shall anyone other than the licensed warehouseman, the custodian, assistant custodian, or duly appointed employees of the Department of Agriculture in the performance of their official duties, affix any seals to a licensed bin or remove a seal therefrom. Where bins are licensed no receipts may be issued for products stored in any bin until after the seals have been affixed, and no seals may be broken for the purpose of delivering the products until the receipts covering such products have been surrendered and canceled. Seals may be broken to permit inspecting and reasonable sampling of the goods; but such work must be done by the licensed warehouseman, the custodian, or an assistant custodian, and after inspecting or sampling new seals shall be affixed to the bin.*† [Sec. 15]

151.16 Signs of tenancy; placing. (a) Each licensed field warehouseman shall, during the period of his license, maintain suitable signs on the licensed property in such manner as to give ample public notice that such property has been leased by the warehouseman and is controlled and operated by him. Such signs must be of such size and be so affixed to the outside of each licensed building, and at appropriate places within the building, as to attract the attention of and give notice to the public as to the real tenancy, and must be placed at each point of entry to and exist from the licensed space.

(b) Such signs shall include the following: (1) the name and address of the licensee, (2) the name of the warehouse, (3) the license number of the warehouse, (4) a statement that the warehouseman is lessee, and (5) the words "public warehouse."

(c) Such other wording or lettering as it not inconsistent with the purpose of the Act and the regulations in this part and is approved by the Bureau may appear in the sign or signs.

(d) The warehouseman shall not permit signs to remain on his licensed property which might lead to confusion as to the tenancy.*† [Sec. 16]

